83-870

No.

In the Supreme Court of the United States

OCTOBER TERM, 1983

STATE OF CONNECTICUT, WILLIAM A. O'NEILL, in his official capacity as Governor of Connecticut, JOSEPH I. LIEBERMAN, in his official capacity as Attorney General of Connecticut, LESTER FORST, in his official capacities as Acting Commissioner of State Police of Connecticut and Commissioner of Public Safety of Connecticut, J. WILLIAM BURNS, in his official capacity as Commissioner of Transportation of Connecticut, BENJAMIN A. MUZIO, in his official capacity as Commissioner of Motor Vehicles of Connecticut,

Appellants

v.

UNITED STATES OF AMERICA, ELIZABETH HANFORD DOLE, Secretary of the Department of Transportation, and R. A. BARNHART, Administrator of the Federal Highway Administration,

Appellees

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether §411 of the Surface Transportation Assistance Act ("STAA"), 49 U.S.C. §2311, which forbids the States from enforcing highway safety prohibitions against tandem trailer trucks, violates the State of Connecticut's sovereignty as protected by the tenth amendment of the United States Constitution?

2. Whether the STAA pre-empts the State of Connecticut's efforts under §3 of its Tandem Truck Act (P.A. 83-21(3)) to enact highway safety regulations, to protect its citizenry, regarding tandem truck traffic on Connecticut highways?

TABLE OF CONTENTS

	Page
Table of Authorities	iii
Questions Presented	1
Opinions Below	2
Jurisdiction	2
Statutes Involved	2
Statement of the Case	3
The Questions Are Substantial	6
Conclusion	26

APPENDIX

Order of the United States Court of Appeals for the Second Circuit	2a
Order of the United States District Court for the District of Connecticut	4a
Memorandum of Decision of the United States District Court for the District of Connecticut	4a
Memorandum of Decision of the United States District Court for the District of Connecticut	7a
Notice of Appeal	27a
Statutes Involved	29a

TABLE OF AUTHORITIES

Page

Cases

Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520 (1959) 9, 22, 24, 25

Brown v. EPA, 521 F.2d 827 (9th Cir. 1975) 11

Champlin Refining Co. v. Corporation Commission of Oklahoma, 286 U.S. 210 (1932) 12

District of Columbia v. Train, 521 F.2d 971 (D.C. Cir. 1975) 11

Doran v. Salem Inn, Inc., 422 U.S. 922 (1975) 5

EEOC v. Wyoming, 103 S.Ct. 1054 (1983) 9

Exxon v. Governor of Maryland, 437 U.S. 117 (1978) ... 20

FERC v. Mississippi, 456 U.S. 742 (1982) 6, 9, 10

Florida Lime and Avocado Growers, Inc. v. Paul, 373 U.S. 132 (1963) 21

Fry v. United States, 421 U.S. 542 (1975) 6

Harriman v. Northern Securities Co., 197 U.S. 244 (1905) 5

Hodel v. Virginia Surface Mining and Reclamation Association, Inc., 452 U.S. 264 (1981) 7, 8

Huron Cement Co. v. Detroit, 362 U.S. 440 (1960) 20, 21, 24

Jones v. Rath Packing Co., 430 U.S. 519 (1977) 10

Page

Kassell v. Consolidated Freightways Corp., 450 U.S. 662 (1981) 9

Maurer v. Hamilton, 309 U.S. 598 (1940) ... 21, 22, 23, 24

Merrill, Lynch, Pierce, Fenner & Smith v. Ware, 414 U.S. 117 (1973) 21

Mitchell v. King, 169 Conn. 140, 363 A.2d 68 (1975) 16

National League of Cities v. Usery, 426 U.S. 833 (1976) 6, 7, 13

New Orleans v. Dukes, 427 U.S. 297 (1976) 5

Ray v. Atlantic Richfield Co., 435 U.S. 151 (1978) ... 19, 21

Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429 (1978) 8

Joseph E. Seagram & Sons, Inc. v. Hostetter, 384 U.S. 35 (1966) 20

South Carolina State Highway Dept. v. Barnwell Brothers, Inc., 303 U.S. 177 (1938) 8, 9

Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945) ... 22

Sproles v. Binford, 286 U.S. 374 (1932) 25

Stevens Sec. Bank v. Eppivic Corp., 411 F.Supp. 61 (W.D. Ark 1976) 10

Tilton v. Richardson, 403 U.S. 672 (1971) 19

United States v. Jackson, 390 U.S. 520 (1968) 12

Page

United States v. O'Brien, 391 U.S. 367 (1968) 19

Younger v. Harris, 401 U.S. 37 (1971) 11

Constitution

U.S. Constitution, Art. I, §8, Cl. 3 4

Tenth Amendment 4, 6, 7

Statutes

Surface Transportation Assistance Act, 49 U.S.C. §2311 *Passim*

§2313 2

§2315 23

Conn. Pub. Act 83-21 (1983) ..... *Passim*

28 U.S.C. §1254(2) 2

28 U.S.C. §2103 26

§1337 2

§1345 2

Conn. Gen. Stats. §1649, 1655 (1930) 3

§14-261 11-12

§14-262 17-18

Regulations

Department of Transportation FHWA Policy Statement, 48 Fed. Reg. No. 24 (Feb. 3, 1983) 16, 9

Department of Transportation, FHWA Proposed Rules 48 Fed. Reg. No. 179 (Sept. 14, 1983) 16, 21, 24, 25

Other Authorities

Wright & Miller, *Federal Practice and Procedure*, §4037 5

Hearing Before Com. on Commerce, Science & Trans., U.S. Senate, Dec. 3, 1982 4

State Transportation Committee Hearings, P.A. No. 81-366 (March 12, 1981) 17-18

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JURISDICTIONAL STATEMENT

Appellants the State of Connecticut, *et al.* (hereinafter State of Connecticut or State) hereby appeal from the order of the United States Court of Appeals for the Second Circuit entered in this case on September 1, 1983.

OPINIONS BELOW

The opinion of the United States District Court for the District of Connecticut is reported at 566 F.Supp. 571 (1983). This opinion and the accompanying order are reprinted in the Appendix at 4a to 26a.

The order of the United States Court of Appeals for the Second Circuit, not yet officially reported, is reprinted in the Appendix at 2a to 3a.

JURISDICTION

This is an action for injunctive relief brought by the appellee, United States of America, to enjoin Conn. Pub. Act. No. 83-21 (1983), claiming jurisdiction under 28 U.S.C. §§1337 and 1345 and 49 U.S.C. §2313. The District Court entered an order granting preliminary relief on June 13, 1983, which was affirmed by order of the Second Circuit Court of Appeals on September 1, 1983.

Notice of Appeal was filed in the Second Circuit on September 26, 1983. The jurisdiction of the Court is invoked under 28 U.S.C. §1254(2).

STATUTES INVOLVED

The Statutes at issue in this appeal, the Surface Transportation Assistance Act of 1982, §411, 49 U.S.C. §2311, and Conn. Pub. Act No. 83-21 (1983), are reprinted in the Appendix at 29a to 37a.

STATEMENT OF THE CASE

This case involves the issue of whether the federal government can, consistent with our federalist system of government, compel states to permit trucks equipped with twin or "tandem" trailers on their highways, while, at the same time, prohibiting the states from imposing reasonable safety regulations on the operation of such vehicles.

For over fifty years Connecticut has banned tandem trailers on its highways. *See* General Statutes §§1649, 1655 (1930). Uncontroverted evidence adduced in this case shows that these double trailers, pulled by a single cab, have a tendency to roll over and sway (Trial transcript in District Court, 142-147)[1] and have ineffective braking mechanisms. (Tr. 162-168). These defects are especially threatening for Connecticut drivers because of the exceptionally high frequency of exits and the numerous lane terminations on Connecticut's highways, conditions which tandem trucks cannot accommodate safely (Tr. 108, 110, 116). Finally, these threats to motorist safety are significantly aggravated because Connecticut's highways are among the most congested roadways in the nation. (Tr. 127, 128).

In January, 1983, Congress, with virtually no consideration of the highway safety of these vehicles, passed the Surface Transportation Assistance Act, §411 of which prohibits states, including Connecticut, from banning tandem trucks from the interstate highway system and certain primary system local roads.[2]

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[1]Hereinafter "Tr." This hearing occurred on June 9, 1983. The Plaintiff, United States of America declined the District Court's invitation to offer any evidence to rebut the State's proof.

[2]The Statute also sets minimum length restrictions, which Connecticut presently satisfies.

This hasty action was taken without a meaningful discussion of the safety problems posed by tandems or of the reasons why thirteen States other than Connecticut also have banned their entry. No findings were made in support of these provisions. There are no facts offered as to the extent of use of tandem trailers, their safety characteristics, their effect on highway maintenance or their adaptability to varying operating conditions and topography. There are no findings that Interstate Commerce will be furthered in any manner by this Act. The legislation was passed to satisfy the demands of a trucking industry disturbed by the gasoline and diesel tax increases contained in the STAA. (Tr. 229-230, Hearing before Com. on Commerce, Science & Transportation, U.S. Senate, Dec. 3, 1982).

Connecticut's response was a reaffirmation of its prior ban on tandems by passage of Conn. Pub. Act No. 83-21 (1983). In addition to the prohibition of tandems, the challenged Connecticut Act, through §3 of Conn. Pub. Act No. 83-21, establishes a permit system, to take effect in the event that the outright ban of tandems is enjoined.

Testimony in this case demonstrates that a serious need exists for such regulation, and that such permits can easily be issued. The permit system allows the State to review vehicle qualifications and inform the drivers of routes and other significant roadway conditions. (Tr. 191, 192).

The United States brought its suit for injunctive relief in the District Court on May 27, 1983, alleging that Conn. Pub. Act No. 83-21 violated the Commerce Clause of the United States Constitution, Art. I, §8, Cl. 3, and also that it was pre-empted by the STAA. The State responded that Conn. Pub. Act No. 83-21 was consistent with the Commerce Clause and that the STAA §411(c) violated the tenth amendment. The State also contended that the STAA had not pre-empted it from establishing a permit under §3 of its Tandem Truck Act.

The District Court rejected the State's arguments and granted preliminary relief for the United States, based upon the contention that the STAA had pre-empted the State's regulatory authority. Despite uncontradicted proof[3] that additional State funds and resources would be spent due to tandem trailer accidents on Connecticut's highways and that highway safety would be impaired, the District Court refused to find a threat to state sovereignty, or a duty of the State to protect its citizenry. Moreover, the District Court held that the STAA not only pre-empted outright bans on tandem trailers, but also pre-empted Connecticut's reasonable efforts to regulate tandems, assuming that these trucks must be allowed on Connecticut highways at all. The effect is to remove virtually all state jurisdiction to regulate tandem trailers.

The Court of Appeals affirmed the order of the District Court, stating that it was adopting the reasons stated in the District Court's ruling of June 13, 1983. Appendix at 2a to 3a.

It should be noted that while this is a preliminary ruling, both the District Court and the Court of Appeals have issued orders based upon the merits of the matter, rather than as a matter of discretion. The order of the District Court is thus final for the purposes of review in this Court. *Harriman v. Northern Securities Co.*, 197 U.S. 244 (1905); *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 927 (1975); *New Orleans v. Dukes*, 427 U.S. 297, 301 (1976). *See also* Wright and Miller, *Federal Practice & Procedure*, §4037 at 35-37.

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[3]Increased truck size will lead to further serious accidents and thereby increase state costs for Medicaid, Aid to Families with Dependent Children, institutional costs, lost work time and Workers Compensation, litigation expenses and highway repair. Tr. 217, 218.

THE QUESTIONS ARE SUBSTANTIAL

This case raises two significant issues of federal law for resolution by this Court. The first is the constitutional issue of whether the STAA's pre-emption of state laws on tandem trailers violates the tenth amendment. The second is the statutory question of whether Congress intended the STAA to go further and pre-empt state safety regulations regarding tandem trailers.

A. SECTION 411 OF THE STAA EXCEEDS THE POWERS OF CONGRESS UNDER THE COMMERCE CLAUSE AND USURPS THE SOVEREIGN FUNCTIONS OF THE STATES IN VIOLATION OF THE TENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

A basic tenet of our federal system of government is the preservation of the integrity of the states.[4]

> Congress may not exercise power in a fashion that impairs the states' integrity or their ability to function effectively in a federal system. *National League of Cities v. Usery*, 426 U.S. 833, 842-843 (1976) quoting *Fry v. United States*' 421 U.S. 542, 547 n.7 (1975).

This Court has held that the tenth amendment[5] is a specific limitation on Congress' broad powers under the Com-

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[4]As Justice O'Connor said, in her partial concurrence in *FERC v. Mississippi*, 456 U.S. 742, 777 (1982), "[t]he Constitution contemplates 'an indestructible Union, composed of indestructible States,' a system in which both the state and national governments retain a 'separate and independent existence.'" (citations omitted).

[5]"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.C. Const. Amend. X.

merce Clause, and will act as a bar where Congress seeks to encroach on attributes of state sovereignty. *National League of Cities, supra.*

> [T]he States as States stand on a quite different footing from an individual or a corporation when challenging the exercise of Congress' power to regulate commerce . . . Congress may not exercise that power so as to force directly upon the States its choices as to how essential decisions regarding the conduct of integral government functions are to be made. We agree that such assertions of power if unchecked, would indeed . . . allow "the national government [to] devour the essentials of state sovereignty." *Id.* at 854-5.

In *Hodel v. Virginia Surface Mining and Reclamation Association, Inc.*, 452 U.S. 286 (1981), the court established a comprehensive test for tenth amendment claims:

> [F]irst there must be a showing that the challenged statute regulates the states as states . . . . Second, the federal regulation must address matters that are indisputably attributes of state sovereignty . . . . and third, it must be apparent that the states' compliance with the federal law will directly impair their ability to structure integral operations in areas of traditional government functions . . . . Demonstrating that these three requirements are met does not . . . guarantee that a Tenth Amendment challenge to congressional commerce power action will succeed. There are situations in which the nature of the federal interest advanced may be

such that it justifies state submission. *Id.* at 278, 288.

The STAA, inasmuch as it is directed at states and not at private persons, clearly regulates states as states. The encroachment upon state sovereignty is apparent from the language of the statute itself. Section 411(c) mandates that "no State shall prohibit commercial motor vehicle combinations consisting of a truck tractor and two trailing units" on the interstate system and portions of the primary system designated by the federal government. Section 411(a), (b), and (d) further prohibit the states from enacting laws on lengths of trailers that vary from the specified lengths and require the states to hew to rules adopted by the Department of Transportation to implement the statutory provisions.

Furthermore, because the Act affects the safety and use of state highways, an activity traditionally the responsibility of the states, the Act addresses matters indisputably attributes of state sovereignty. *See Raymond Motor Transportation, Inc. v. Rice*, 434 U.S. 429, 443 (1978) (presumption of validity of state regulation of interstate highway traffic). This Court has further stated that:

> Few subjects of state regulation are so peculiarly of local concern as is the use of state highways. Unlike the railroads, local highways are built, owned and maintained by the state or its municipal subdivisions. The state has primary and immediate concern in their safe and economical administration . . . . *South Carolina State Highway Department v. Barnwell Brothers, Inc.*, 303 U.S. 177, 187 (1938).[6]

See also, Kassel v. Consolidated Freightways Corp., 450 U.S. 662 (1981), and *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 523 (1959).

Indeed, the decision of the District Court makes no reference to these aspects of the *Hodel* test, and appears to be concerned only with the third prong of this test, namely whether the State demonstrated that the STAA directly impairs Connecticut's ability to structure integral operations in areas of traditional functions. The Supreme Court has stated that that determination depends on "considerations of degree." *EEOC v. Wyoming*, 103 S.Ct. 1055 (1983).

The decision of the District Court applied an even stricter standard than set forth in *Hodel*, citing a failure of the appellants to demonstrate a "wide-ranging and profound threat to the structure of State governance." (Appendix at 20a). This test finds no support in the law and unless corrected could lead to evermore burdensome intrusions into the sovereignty of the states. As Justice Powell warned in his partial concurrence in *FERC v. Mississippi, supra*, at 774, courts should be equally concerned with the *gradual* encroachment of the federal system over the state.

The STAA significantly interferes with Connecticut's ability to formulate and implement policy in the vital area of highway safety. In addition, state funds and resources

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[9]The Federal Highway Administration itself recognizes the need for local control of highway safety. "The states are most familiar with their highway systems, including the structural capacity of bridges and pavements, traffic volumes and unique climatic conditions. Also the states are responsible for traffic regulation and enforcement." FHWA Policy Statement, 48 Fed. Register 24 (February 3, 1983).

will be expended as a result of an increased accident rate and greater damage to highways caused by tandem trailers. If limited state resources are expended in these areas, other needy state programs will undoubtedly suffer. This is the very type of local decision-making that the tenth amendment was intended to protect.

> We acknowledge that 'the authority to make . . . fundamental . . . decisions' is perhaps the quintessential attribute of sovereignty . . . . Indeed, having the power to make decisions and to set policy is what gives the State its sovereign nature . . . . It would follow that the ability of a state legislative body—which makes decisions and sets policy for the State as a whole—to consider and promulgate regulations of its choosing must be central to a State's role in the federal system. *FERC v. Mississippi, supra*, at 761. [citations omitted]

By pre-empting Connecticut's legislation regulating tandem trailers and substituting federal law which entirely disregards the local safety concerns, Congress has usurped the state's role in overseeing the safe use of state highways.[7] This is not cooperative federalism. Connecticut is not given the

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[7]There is a presumption against federal pre-emption of state regulation in fields of such traditional state activity. Only the clearest showing of Congressional intent to displace the states is adequate. *Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977)*. In *Stevens Sec. Bank v. Eppivic Corp.*, 411 F.Supp. 61 (W.D.Ark. 1976) the legislative history of the challenged federal act was "of considerable importance, particularly as it may shed some light on the intent of the Congress and the perception of the Congress of the necessity and basis for federal legislation in what has traditionally been an area left to the determination of the various states." *Id.* at 66.

latitude of making a choice, even at the risk of deprivation of federal aid highway funds, as was the case in *District of Columbia v. Train*, 521 F.2d 971, 973, n.26 (D.C. Cir. 1975). Here, regardless of local concern for safety or conditions of local roads, the states *must* comply with a comprehensive size and configuration scheme, "reducing the states to puppets of a ventriloquist Congress." *Brown v. EPA*, 521 F.2d 827, 839 (9th Cir. 1975).

This Court should act to protect the sovereign integrity of the States from this type of federal encroachment, showing sensitivity to the legitimate interests of both state and national governments. *Younger v. Harris*, 401 U.S. 37, 44 (1971).

B. SECTION 3 OF THE CONNECTICUT ACT IS A VALID EXERCISE OF STATE POLICE POWER BEING NEITHER PRE-EMPTED BY FEDERAL LAW NOR EXCESSIVELY BURDENSOME ON INTERSTATE COMMERCE.

The Connecticut Act was drafted as two alternative provisions. Section 2 amends a previous statute in order to provide for the ban on tandem truck traffic in the State.[8]

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[8]To effect the ban, the State legislature merely added one line to §14-261 of the Conn. Gen. Statutes. The District Court failed to sever that portion of the Act involving tandem trucks, and instead, invalidated the statute in its entirety. The original §14-261 to which the ban provision was added stated:

> Sec. 14-261. *Towing and pushing of vehicles. Double trailers and semitrailers.* When any occupied vehicle is drawn or towed by another vehicle upon any public highway, the distance between the towing vehicle and the vehicle being towed shall not exceed twenty feet. A rigid tow bar shall be used when towing any vehicle on any

> limited access highway and when towing any unoccupied vehicle on any other public highway. No vehicle shall draw or tow at the same time more than one vehicle upon any public highway, including, but not limited to, a trailer which is designed or constructed so that no part of its weight except the towing device rests upon the towing vehicle, a semitrailer or a semitrailer equipped with an auxiliary front axle, but excluding a pole trailer, except that such limitation shall not apply to a combination of vehicles coupled together by a saddlemount device used to transport motor vehicles in driveway service when no more than two saddlemounts are used, provided equipment used in such combination shall have been approved by regulations adopted by the commissioner of motor vehicles in accordance with the provisions of §§ 4-166 to 4-174, inclusive, and shall comply with the safety regulations of the United States Department of Transportation. No occupied vehicle shall be pushed or otherwise propelled from the rear by another vehicle except for the purpose of obtaining emergency service to start the engine of such vehicle or to perform the immediate function of removing such vehicle from the travel lanes to a place of safety at the roadside. Pushing, propelling, drawing or towing a motor vehicle, except as authorized by the provisions of this section shall be an infraction.

It is well settled that:

> The unconstitutionality of a part of an act does not necessarily defeat or affect the validity of its remaining provisions. Unless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what it left is fully operative as a law. [citations omitted]. *Champlin Ref. Co. v. Corp. Comm'n. of Oklahoma*, 286 U.S. 210, 234 (1932),

and *see United States v. Jackson*, 390 U.S. 520 (1968).

Section 3 provides for the establishment of highway safety regulations and was intended to take effect if enforcement of §2 were enjoined. Section 3 states "In the event that a court of competent jurisdiction enjoins the state from enforcing [§2] . . . the following provisions apply . . .", thus clearly establishing the legislature's intention to create a separate and severable Act. Without any analysis, the District Court invalidated all of the challenged provisions of §3.

The Court characterized §3 as a scheme of "petty irritations" designed to accomplish indirectly the goals sought by §2. (Appendix at 15a) and held that §3 was pre-empted. The Court based its decision on what it perceived were wrongful motivations on the part of the State legislature.[9] Section 3, however, was designed to permit compliance with the Federal STAA, (Tr. 84-85), and a close examination of the two statutes reveals that the parallel provisions are complementary and harmonious.[10]

The chart below is a side-by-side, provision-by-provision comparison of the STAA and Conn. Pub. Act. No. 83-21, §3. Such an analysis conclusively establishes that §3 is neither pre-empted, nor excessively burdensome.

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[9]Nowhere in the STAA did Congress expressly pre-empt the states' power to implement a highway safety program of this sort. Nor does the legislative history indicate any such Congressional intent.

[10]Tenth amendment concerns addressed elsewhere in detail are similarly applicable to Conn. Pub. Act No. 83-21, §3. Prohibiting a state from enacting highway safety regulations merely because Congress has addressed truck length and configuration requirements "devour[s] the essentials of state sovereignty." *National League of Cities, supra* at 855. It removes the states' authority over a vital area and neutralizes its ability to protect its citizenry.

STATE ACT*
(P.A. 83-21, §3)

(1)(A)
1. Permits tandem trucks
   A. On interstates
   B. On primary highways designated pursuant to the STAA, by the Commissioner of Transportation

(1)(B)
1. Permits tandem trucks on highways designated pursuant to the STAA by the Commissioner to provide access between:
   A. highways designated pursuant to §(1)(A), [above], and
   B. terminals for food, fuel, repairs, rest or loading points within 1 mile from §(1)(A) [above] designated highways.
2. Authorizes Commissioner to adopt regulations establishing:
   A. access routes
   B. hours of operation
   C. braking, maintenance and other safety standards

(2)(A)
1. Requires vehicles exceeding 60′ to obtain written permit from Commissioner specifying conditions under which they can be operated.[11]

(2)(B)
1. Permits the following sized vehicles:
   A. 48 feet for the trailer of a semi-trailer
   B. 28 feet per trailer for a tandem truck
   C. There is no overall truck length limitation

(4)
1. Requires tandem trailers to obtain written permit from Commissioner specifying conditions under which they can be operated.
2. Requires holding a valid class 1-A license to be a prerequisite to obtaining a permit.
3. Establishes $500 fine and 60-day suspension of registration or operator's license for violating any provision of a permit.

[11]Subsection (2)(A) is a revision of a 1949 Connecticut Statute, modified to conform with the STAA. *See* n.12 *infra*.

FEDERAL ACT
(STAA P.L. 97-424)

411(c)
1. Requires states to permit tandem trucks
   A. On interstates
   B. On primary highways designated by the Secretary of Transportation

411(c) and (e)(1)-(3)
1. Authorizes Secretary of Transportation to enact rules to implement the STAA.
   A. Subsequently published DOT proposed rules permit States to enact restrictions involving:
      1. access routes
      2. times of travel
      3. construction areas
      4. structural deficiencies
      5. adverse weather conditions
      6. limited highway lane use

Neither the STAA nor the federal DOT guidelines address the manner of notification to tandem trucks of permissible safety measures.

411(a) and (b)
1. Requires States to permit the following sized trucks:
   A. 48 feet for the trailer of a semi-trailer
   B. 28 feet for the trailer of a tandem truck

Neither the STAA nor the DOT guidelines address the manner of notification to tandem truckers of permissible safety measures.

Neither the STAA nor the DOT guidelines address sanctions for violating permissible safety measures.

*Subdivisions 3, 5 and 6 of the State Act were not challenged and are therefore not discussed.

The above comparison clearly illustrates that §3 of the State Act is in compliance with the STAA. As required, § (1) (A) permits tandem trucks on interstates and primary roadways designated *pursuant to the STAA*. The State Commissioner of Transportation is merely established in the state law as the state liaison official to coordinate State compliance with federal requirements.

Both Congress and the DOT recognized the need for continuing cooperation between the state and federal governments to implement the STAA. Road conditions and traffic patterns vary, and the states, themselves, are in the best position to enact compensatory regulations. *See* Senate Debates, Tr. 229-30 and *see* Department of Transportation, Federal Highway Administration, Policy Statement, 48 Fed. Reg. No. 24 at 5211, (Thursday, Feb. 3, 1983) and Department of Transportation, Federal Highway Administration, Proposed Rules, 48 Fed. Reg. No. 179 (Wednesday, Sept. 14, 1983). Section (1) (B) of the State Act provides the standards for the Commissioner to adopt necessary safety regulations within the guidelines established by the federal government.[12] The rules proposed by the Department of Transportation pursuant to the STAA expressly permit the states to enact the conditions provided for in the Connecticut Act. Thus, subsection (1) (B) complies with the STAA.

Both the STAA and the DOT guidelines are silent on the manner in which a state should notify truckers about safety measures. Connecticut, therefore, in subsection (2) (A)

[12]It is important to note that the delegation doctrine retains its vitality in Connecticut. Absent the guidelines set forth in the Connecticut Act, any exercise of regulatory power by the Commissioner might be considered an impermissible delegation of legislative authority, *Mitchell v. King*, 169 Conn. 140, 363 A.2d 68 (1975).

elected to continue its use of a permit system that has been in effect since 1920. Contrary to the government's contentions that the system will be used to ban vehicles, the Connecticut system has been consistently used solely as a means of notifying truckers of the conditions under which they may safely operate.[13] *See* State Transportation Com-

[13]Subsection (2)(A) is a revision of §14-262 of the Connecticut General Statutes, *modified to conform with the STAA.* Conn. Gen. Stat. §14-262 was enacted in 1949 as part of a highway safety system and reads as follows:

> Sec. 14-262. *Width and length of vehicles. Exceptions. Permits.* (a) The following vehicles shall not be operated upon any highway or bridge without a special written permit from the commissioner of transportation, as provided in §14-270, specifying the conditions under which they may be so operated: (A) A vehicle or combination of vehicle and trailer which, with its load, is wider than eight feet six inches except (i) farm equipment or (ii) a vehicle or combination of vehicle and trailer loaded with hay or straw; (B) a vehicle or combination of vehicle and trailer which is longer than sixty feet except a vehicle or combination of vehicle and trailer loaded with poles, lumber, piling or structural units which, with its load, does not exceed eighty feet in length or (C) a vehicle drawing or towing a trailer which is longer than forty-five feet excluding refrigeration units, air shields or safety devices. Such permit shall not be required in the case of (1) a trailer designed and used exclusively for transporting boats when the gross weight of such boats does not exceed four thousand pounds or (2) a school bus equipped with a folding stop sign or exterior mirror, as approved by the commissioner of motor vehicles, which results in a combined width of bus and sign or bus and mirror in excess of that established by this section or (3) a vehicle or vehicle and semi-trailer, commonly known as an automo-

mittee Hearings, P.A. No. 81-366, Remarks by Mr. Tourville and Mr. Blasko, at 637-38 (March 12, 1981).

Subsection (2) (B) of the Connecticut Act merits little discussion as it virtually parrots the federal act.

Subsection (4) of the State Act expressly extends the above discussed permit system to tandem trucks. It also provides for sanctions for enforcement purposes. The STAA, confined to truck length and configuration requirements, is silent on the means of notification to truckers of permissable safety measures and their means of enforcement. Similarly, the Federal Department of Transportation through its guidelines has relegated safety considerations to the states, themselves, and has not addressed state enforcement of those

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bile trailer, designed and used exclusively for transporting new and used motor vehicles, provided such automobile trailer when unloaded is not longer than fifty-five feet and when loaded is not longer than sixty feet, with its load, and conforms to the provisions of §14-96k. Violation of any provision of this section shall be an infraction.

(b) Notwithstanding the provisions of subsection (a) of this section, the commissioner of transportation, upon application of any owner, may grant a special permit to allow the operation of a vehicle drawing or towing a trailer which is longer than forty-five feet but not longer than forty-eight feet. Such permit shall be issued annually at a fee of two hundred dollars for one or more of such vehicles operated by such owner. Such permit may contain any restrictions or conditions the commissioner deems necessary.

It is evident that both the Court and the United States Government clearly misunderstood the origins and the purpose of subsection (2)(A). Moreover, in holding subsection (2)(A) unconstitutional, the Court has impliedly repealed §14-262 without line-by-line scrutiny.

regulations. The penalty provisions in subsection (4) are a necessary enforcement tool without which the permitted regulations become meaningless. Thus, subsection (4) also complies with the STAA.

As is evident from the above, the provision-by-provision analysis indicates that State Act §3 falls squarely within the STAA.

The District Court below, however, ignored these factors, focusing instead on what it felt was legislative ill-will.

Legislative motivations have consistently been held to be impermissible grounds on which to invalidate statutes. *United States v. O'Brien*, 391 U.S. 367, 393 (1968). Courts must, instead, confine their assessment to that actually written. *Cf. Tilton v. Richardson*, 403 U.S. 672, 679 (1971). The Court below, however, refused to read the statute in the intended severed form, evaluating it only in reference to §2, as part of "the State's general scheme to exclude these menacing double-trucks from Connecticut's highways." (Appendix at 16a). Moreover, evaluating a state statute allegedly pre-empted by a federal act requires a provision-by-provision analysis to determine areas of harmony. *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978). The Court below refused to undertake this chore despite its own recognition that provisions of §3 may actually be valid.[14]

[14]The Court stated:

> Taken one by one, the various provisions of §3 of the Connecticut Statute might be justified as being either in accordance with Federal law or permissible as exercises of the State's "police power," . . . Considered in its totality, however, §3 reveals a scheme of burdensome regulation that could only have the effect of achieving by an accumulation of petty irritations what §2 of the Connecticut statute seeks to achieve through outright prohibition. (Appendix at 15a).

Indeed, in holding that §3 was pre-empted, the District Court did not refer to any particular statutory language or legislative history to justify its result. Instead, it said simply that §3 "burdens the activity that the STAA was clearly intended to protect." (Appendix at 15a). The nature and extent of this burden was not specified, nor was it made clear in what respects the Section was invalid.

It is also important to note that §3 is not a total regulatory scheme itself. A major portion of it is merely enabling provisions authorizing the State Commissioner of the Department of Transportation to establish safety regulations. Exactly what those regulations will be, as well as their impact on Interstate Commerce, is as yet undetermined. To hold that these regulations would be burdensome was mere speculation on the part of the Court. Indeed, ruling on the effect of regulations not yet drafted amounts to "seeking out conflicts between state and federal regulations where none clearly exists." *Exxon v. Governor of Maryland*, 437 U.S. 117, 120 (1978) *citing Huron Cement Co. v. Detroit*, 362 U.S. 440 (1960), *Joseph E. Seagram & Sons, Inc. v. Hostetter*, 384 U.S. 35, 45 (1966) and thus violates basic principles of constitutional law and statutory construction.

To hold that §3 has been pre-empted by the STAA prevents the State from assisting in the implementation of the STAA, and effectively strips the State of its right to protect its citizenry. It immunizes truck traffic from the natural exercise of state police power attempting to minimize safety hazards on state roadways. In *Huron Portland Cement Co. v. Detroit, supra*, at 441, the Court recognized that the mere existence of federal legislation does not immunize the subject of that legislation from the valid exercise of local police power.

PRE-EMPTION

"Federal pre-emption should not be lightly presumed." *Merrill, Lynch, Pierce, Fenner & Smith, Inc. v. Ware*, 414 U.S. 117 (1973); *Florida Lime and Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); *Huron Portland Cement Co. v. Detroit, supra.* This is particularly true when public safety and health is involved. *Maurer v. Hamilton*, 309 U.S. 598, 614 (1940). Indeed, absent an explicit or implicit declaration by Congress that all State regulations are pre-empted, a state statute is void only to the extent that it actually conflicts with the Federal Act. A conflict is found where compliance with both regulatory schemes is physically impossible, or where the state law amounts to an obstacle to the fulfillment of the Congressional purpose and intent. *Ray v. Atlantic Richfield Co., supra*, at 157-58 (1978).

The articulated purpose of the STAA is to enhance productivity in the trucking industry to offset the impact of an increased tax burden, Committee Hearing, *supra.* The objective was accomplished by legislating uniformity in truck lengths and tandem configurations.

The Connecticut Act, conversely, is designed to preserve highway safety through a system of regulation to be formulated pursuant to the STAA and guidelines issued by the Federal Department of Transportation. Those guidelines specifically permit states to impose restrictions involving hours of travel, access routes to repair and rest facilities, construction zones, seasonal operation, adverse weather conditions, and structural deficiencies. Proposed Rules, 48 Fed. Reg. No. 179 at 41277 (Wednesday, September 14, 1983).

The maintenance of highway safety has historically been within the province of the states. Federal Regulation of truck

size and weight began with the 70th Congress in 1935, *Maurer v. Hamilton, supra,* n.14 (1940) and almost uniformly provided that states were primarily responsible for matters relating to the maintenance, protection, safety and use of the highways. *Id.* State highway safety measures carry "a strong presumption of validity," *Bibb v. Navajo Freight Lines, Inc., supra,* at 525 (1959), and have been equated with the state's exceptional power over "quarantine measures, game laws and like local regulations of rivers, harbors, piers and docks . . .". *Southern Pac. Co. v. Arizona,* 325 U.S. 761, 783 (1945). The complexities of federal regulation affecting state highways were described in *Maurer v. Hamilton, supra:*

> [Highways] . . . are open . . . to use by privately owned and controlled motor vehicles of widely different character as respects weight, size and equipment. The width, grades, curves, weight-bearing capacity, surfacing and overhead obstructions of the highways differ widely in the forty-eight different states and in different sections of each state. There are like variations with respect to congestion of traffic. *Id.* at 605.

The regulations authorized by §3 of the State Act encompass these types of unique concerns. For example, unlike other states, Connecticut does not have circumferential highways or beltways bypassing major cities. Rather, highways penetrate into and intersect the hearts of its major cities. Consequently, Connecticut has road configurations requiring several lane changes over a small distance for a vehicle merely to stay on the road. (Tr. 103). These conditions, coupled with the propensities of the rear or pup trailer of the tandem to roll over, (Tr. 145-47) or to swing into adjoining lanes of traffic (Tr. 165-66) render the unregulated introduction of these trucks into congested areas uniquely hazardous.

Moreover, depending upon road curvature, vehicles exceeding certain sizes are physically incapable of negotiating some access ramps. (Tr. 198).

It is to these unique concerns of the State of Connecticut that the regulations authorized by §3 of the Connecticut Act are addressed, and that Congress did not and should not touch. Indeed, Congress' only consideration of highway safety was a requirement that the Secretary of the Department of Transportation submit a study of benefits and costs of the introduction of tandems as well as an assessment of their impact upon highway safety within eighteen months after passage of the STAA. P.L. 97-424, §415, 49 U.S.C. §2315. This requirement indicates that Congress was without sufficient information as to safety matters to legislate in that area. Congress, therefore, could not have intended to pre-empt state regulations in an area so vital to state interests.

Maurer v. Hamilton, supra, involved the validity of a Pennsylvania statute limiting truck sizes and weights. At that time, the Interstate Commerce Commission was authorized to enact regulations involving truck safety equipment and to submit to Congress an investigatory report detailing the extent to which uniformity in truck size and weight was necessary. The Court therein upheld Pennsylvania's statute stating that:

> A construction of [the Federal Act] is not to be favored which would deprive the states of authority to make safety regulations of sizes and weight before Congress was informed by a full investigation and report of the Commission of the nature of the regulations, both those in force and those which are needed, and whether in the light of the competing demands for national uniformity and for accommodation to local conditions regulation of sizes

and weight can be best described by the Commission, by the state legislatures, or by a divided authority." *Id.* at 615.

Congress is simply not in the position accurately to assess the safety of road conditions and traffic patterns unique to a given locality, and it is clear on the face of the STAA that it has not attempted to do so. Instead, it sought the assistance from the State Department of Transportation in the STAA's implementation. Far from being pre-empted, State §3 is essential to the federal scheme. *See generally* Proposed Rules, (Wednesday, September 14, 1983), *supra.*

SECTION 3 IS NOT UNDULY BURDENSOME ON INTERSTATE COMMERCE

The District Court also held that §3 is burdensome. (Appendix at 15a). In determining whether a state statute is excessively burdensome on interstate commerce, "it must be borne in mind that the Constitution when conferring upon Congress the regulation of commerce . . . never intended to cut the states off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country." *Huron Portland Cement Co. v. Detroit, supra* at 443-44.

Moreover, "[t]he power of the State to regulate the use of its highways is broad and pervasive. [Highway safety is peculiarly local in nature, and courts] have upheld state statutes applicable alike to interstate and intrastate commerce despite the fact that they may have an impact on interstate commerce." *Bibb v. Navajo Freight Lines, Inc., supra* at 523 (1959).

The permit system, described in §3 of the State Act, is an efficient method of notifying drivers of access routes, permissible hours of travel, construction areas and structural

deficiencies. (Tr. 191, 198). Permits can be issued within fifteen minutes to two hours. (Tr. 191-92). Blanket permits for an extended period of time are available. (Tr. 192). The system that has been in effect in Connecticut for 63 years for oversize vehicles has been well received by the trucking industry. (Tr. 194). Local road conditions and notification thereof require "diversity of treatment according to [their] special requirements" *Bibb v. Navajo Freight Lines, Inc.*, *supra* at 529, *citing* Chief Justice Hughes in *Sproles v. Binford*, 286 U.S. 324 (1932) and uniformity of regulation is impossible. Proposed Rules, (Wednesday, September 14, 1983), *supra.*

Consequently, the regulations in §3 cannot be considered an undue burden on Interstate Commerce.

This case affords the Court the unique opportunity to delineate more clearly the limits on federal pre-emption of state authority whether express (as in the case of the tandem ban) or implied (as in the case of Connecticut's permit system). Limiting the scope of federal encroachment on traditional areas of state responsibility is one of the primary functions of this tribunal. It is thus important that this case receive full and plenary consideration.

CONCLUSION

For the above-stated reasons, probable jurisdiction should be noted. In the event that this Court determines that appeal is inappropriate, Appellants ask the Court to treat these papers as a petition for certiorari pursuant to 28 U.S.C. §2103.

Respectfully submitted,

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No.

In the Supreme Court of the United States

OCTOBER TERM, 1983

STATE OF CONNECTICUT, WILLIAM A. O'NEILL, in his official capacity as Governor of Connecticut, JOSEPH I. LIEBERMAN, in his official capacity as Attorney General of Connecticut, LESTER FORST, in his official capacities as Acting Commissioner of State Police of Connecticut and Commissioner of Public Safety of Connecticut, J. WILLIAM BURNS, in his official capacity as Commissioner of Transportation of Connecticut, BENJAMIN A. MUZIO, in his official capacity as Commissioner of Motor Vehicles of Connecticut,

Appellants

v.

UNITED STATES OF AMERICA, ELIZABETH HANFORD DOLE, Secretary of the Department of Transportation, and R. A. BARNHART, Administrator of the Federal Highway Administration,

Appellees

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JURISDICTIONAL STATEMENT

APPENDIX

ORDER OF AFFIRMANCE
Filed United States Court of Appeals
September 1, 1983

UNITED STATES COURT OF APPEALS
For the Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the first day of September, One Thousand Nine Hundred and Eighty-three.

PRESENT:
HON. ELLSWORTH A. VAN GRAAFEILAND, *Circuit Judge*
HON. GEORGE C. PRATT, *Circuit Judge*
HON. JAMES S. HOLDEN, *District Judge**

UNITED STATES OF AMERICA,	:	
ELIZABETH HANFORD DOLE,	:	
Secretary of the Dept. of	:	
Transportation, and	:	
R. A. BARNHART,	:	
Administrator of the Federal	:	
Highway Administration,	:	
Plaintiffs-Appellees,		
v.	:	83-6159
STATE OF CONNECTICUT,	:	
WILLIAM A. O'NEILL, in his	:	
official capacity as Governor of	:	
Connecticut, JOSEPH I.	:	
LIEBERMAN, in his official	:	
capacity as Attorney General	:	
of Connecticut, LESTER FORST,	:	
in his official capacities as	:	

Acting Commissioner of State :
Police of Connecticut and :
Commissioner of Public Safety :
of Connecticut, J. WILLIAM :
BURNS, in his official capacity :
as Commissioner of :
Transportation of Connecticut, :
BENJAMIN A. MUZIO, in his :
official capacity as :
Commissioner of Motor :
Motor Vehicles of Connecticut, :
Defendants-Appellants.

The order of the United States District Court for the District of Connecticut granting the United States' motion for a preliminary injunction is affirmed substantially for the reasons set forth in Judge Cabranes' "Rule on Motion for Preliminary Injunction" dated June 13, 1983.

HON. ELLSWORTH A. VAN GRAAFEILAND
HON. GEORGE C. PRATT
HON. JAMES S. HOLDEN

*Of the District of Vermont, sitting by designation.

ORDER OF UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, ELIZABETH HANFORD DOLE, Secretary of the Dept. of Transportation, and R. A. BARNHART, Administrator of the Federal Highway Administration, *Plaintiffs,*	:	
v.	:	Civil Action No. H-83-445
STATE OF CONNECTICUT, WILLIAM A. O'NEILL, in his official capacity as Governor of Connecticut, JOSEPH I. LIEBERMAN, in his official capacity as Attorney General of Connecticut, LESTER FORST, in his official capacities as Acting Commissioner of State Police of Connecticut and Commissioner of Public Safety of Connecticut, J. WILLIAM BURNS, in his official capacity as Commissioner of Transportation of Connecticut, BENJAMIN A. MUZIO, in his official capacity as Commissioner of Motor Motor Vehicles of Connecticut, *Defendants.*	:	

ORDER

Upon consideration of plaintiffs' Motion For A Preliminary Injunction, and Defendants' Opposition thereto this Court finds that:

(1) Insofar as §2 of Connecticut Public Act No. 83-21 prohibits commercial motor vehicles pulling more than one trailer from operating on Interstate and designated Federal-Aid Primary System highways within Connecticut, the statute has been preempted by §411 (c) of the Surface Transportation Assistance Act of 1982, Pub. L. 97-424, 96 Stat. 2097 (Jan. 6, 1983) ("STAA") and is void under the Supremacy Clause of the U.S. Constitution, Article VI, Clause 2;

(2) Insofar as §2 of Connecticut Public Act No. 83-21 prohibits commercial motor vehicles pulling more than one trailer from operating on Interstate System and designated Federal-Aid Primary System highways within Connecticut, the statute conflicts with the regulatory provisions of §411 (c) of the STAA and interferes with the power of Congress to regulate commerce among the several states in contravention of the Commerce Clause of the U.S. Constitution, Article I, §8, Clause 3, and it is, therefore, void under the Supremacy Clause of the U.S. Constitution, Article VI, Clause 2;

(3) The continued enforcement by the defendants of §2 of Connecticut Public Act No. 83-21 is in violation of §411 (c) of the STAA and is subject of writ of injunction pursuant to §413 of the STAA;

(4) Insofar as §3 of Connecticut Public Act No. 83-21 is inconsistent with §411 of the STAA, it has been pre-empted by §411 and is void under the Supremacy Clause of the U.S. Constitution, Article VI, Clause 2;

(5) Insofar as §3 of Connecticut Public Act No. 83-21 is inconsistent with §411 of the STAA (it interferes with the power of Congress to regulate Commerce among the several States, it is in contravention of the Commerce Clause of the U.S. Constitution, Article I, §8, Clause 3, and it is void under the Supremacy Clause of the U.S. Constitution, Article VI, Clause 2;

(6) Enforcement of §3 of Connecticut Public Act No. 83-21 by defendants would be in violation of §411 of the STAA and is, therefore, subject to writ of injunction pursuant to §413 of the STAA.

Accordingly this ——— day of ———, 1983 it is ORDERED that

Defendants and their successors, officers, agents, servants, employees and attorneys are hereby enjoined from enforcing §2 and §3(1) of Connecticut Public Act No. 83-21 with respect to highways on the Interstate System and those Primary System highways designated by the Federal Highway Administration pursuant to §411(e) of the Surface Transportation Assistance Act of 1982 and from enforcing the provisions of §§3(2) and 3(4) of Connecticut Public Act No. 83-21 relating to any requirement for obtaining a special written permit from any Connecticut official as a condition for operating a commercial vehicle combination as defined in §1(8) of Connecticut Public Act No. 83-21, or any vehicle not meeting an overall length limit of 60 feet, on highways on the Interstate System and those Primary System highways designated by the Federal Highway Administration pursuant to §411 of the Surface Transportation Assistance Act of 1982. This injunction shall remain in effect pending the final outcome of this action.

UNITED STATES DISTRICT JUDGE
JOSE A. CABRANES
June 13, 1983; 9:55 A.M.

MEMORANDUM OF DECISION

UNITED STATES v. STATE OF CONNECTICUT
Cite as 566 F.Supp. 571 (1983)

UNITED STATES OF AMERICA, ELIZABETH HANFORD DOLE, Secretary of the Department of Transportation, and R. A. BARNHART, Administrator of the Federal Highway Administration, *Plaintiffs*,	:	Civ. A. No. H-83-445 United States District Court, D. Connecticut June 13, 1983
v.	:	
STATE OF CONNECTICUT, WILLIAM A. O'NEILL, in his official capacity as Governor of Connecticut, JOSEPH I. LIEBERMAN, in his official capacity as Attorney General of Connecticut, LESTER FORST, in his official capacities as Acting Commissioner of State Police of Connecticut and Commissioner of Public Safety of Connecticut, J. WILLIAM BURNS, in his official capacity as Commissioner of Transportation of Connecticut, BENJAMIN A. MUZIO, in his official capacity as Commissioner of Motor Vehicles of Connecticut. *Defendants*,	:	

Mark C. Rutzick, Civ. Div., J. Paul McGrath, Asst. Atty. Gen., U.S. Dept of Justice, Washington, D.C., Alan H Nevas, U.S. Atty., Albert S. Dabrowski, Asst. U.S. Atty., D. Conn., Hartford, Conn., David J. Anderson, Robert D. Nesler, U.S. Dept. of Justice, Kenneth N. Weinstein, Cleveland Thornton, U.S. Dept. of Transp., Washington, D.C., Donald L. Ivers, Chief Counsel, Federal Highway Admin., Washington, D.C., for plaintiffs.

Joseph I. Lieberman, Atty. Gen. Elliot F. Gerson, Deputy Atty. Gen., State of Conn., Arnold K. Shimelman, Susan T. Pearlman, Elena S. Boisvert, Katherine Mobley, Francis MacGregor, Kenneth Graham, Mary-Anne Mulholland, Hartford, Conn., Phyllis E. Lemell, New Britain, Conn., Asst. Attys. Gen., Henry Cohn, Sp. Asst. Atty. Gen., Neil G. Fishman, Staff Atty., Rochelle Homelson, Legal Asst., Kyle Ballou, Bernard David, Law Clerks, Hartford, Conn., for defendants.

RULING ON MOTION FOR PRELIMINARY INJUNCTION

JOSE A. CABRANES, District Judge:

The United States seeks a preliminary injunction barring enforcement by the defendant State of Connecticut of its recently enacted statute prohibiting so-called "tandem trailers" on Connecticut highways. In support of its motion, the United States asserts that Connecticut's statute is preempted by an act of Congress, the Surface Transportation Assistance Act of 1982, 49 U.S.C. §2301 *et seq.* In opposition to the United States' motion, Connecticut argues that there is no conflict between the Federal statute and at least some provisions of the State statute; that the Federal law is unconstitutional; and that regulations promulgated by the

Federal Highway Administration pursuant to the Federal statute are illegal.

The court is mindful that this case has aroused public concern and controversy.[1] It would, however, be misleading to characterize the constitutional legal issues as difficult matters. The principles upon which the court must base its decision are as old as the Republic itself and deeply embedded in our history as a nation. For the reasons set forth below, the United States' motion must be granted.

I.

In 1956, the United States Congress decided to authorize a nationwide system of highways to be constructed by the states but with the assistance of Federal funds. As that system has evolved over the years, different types of federally-funded highways have been established. Most federally-funded highways–including some referred to as the Primary System–have three-quarters of their cost funded by the Federal Government. One particular group of highways–the Interstate System–has ninety per cent of its cost supplied from the Federal fisc.

On January 6, 1983, Congress enacted the Surface Transportation Assistance Act of 1982 ("STAA"), 49 U.S.C. §2301 *et seq.* §411(c) of the STAA, 49 U.S.C. §2311(c), provides that states may not prohibit tandem trailers, defined as single truck tractors with two trailing units, from any part of the

[1] *See, e.g., The Hartford Courant*, "Tough Tandem-Ban Fight Expected," June 1, 1983, p. A1, and *The New Republic*, "Crash Course," June 13, 1983, p. 9. For a compilation of some 170 articles and editorials from local and national newspapers on this subject, see Defendants' Appendix (filed June 6, 1983), Vol. I, Part IV.

Interstate System or from parts of the Primary System designated by the Secretary of Transportation.[2]

On April 5, 1983, the Connecticut General Assembly enacted, and Connecticut Governor William A. O'Neill signed into law, Public Act No. 83-21, "An Act Concerning Tandem Trailer Trucks" ("the Connecticut statute"). Section 2 of the Connecticut statute prohibits tandem trailers from using highways in the State.[3] Section 3 of the Connecticut statute

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[2]Section 411(c) of the STAA, 49 U.S.C. §2311(c), provides:

> No State shall prohibit commercial motor vehicle combinations consisting of a truck tractor and two trailing units on any segment of the National System of Interstate and Defense Highways, and those classes of qualifying Federal-aid Primary System highways as designated by the Secretary pursuant to subsection (e) of this section.

[3]Section 2 of the Connecticut statute explicitly bars tandem trailers from the State's highways. The legislative history of the Connecticut statue consistently reflects the intention of its supporters "to deal with the new federal mandate under the Surface Transportation Assistance Act of 1982," Tandem Truck Policy Statement by Rep. Christine Niedermeier and Sen. William DiBella, Co-chairmen, Transportation Committee of the Connecticut General Assembly, March 14, 1983, Defendants' Appendix, Vol. I, Part I–A, at 1. Supporters of the Connecticut statute understood that it was designed to conflict with the Federal law and that a legal response from the United States could therefore be expected.

In introducing the bill, Senator DiBella noted that the General Assembly would express its dissatisfaction with the fact-finding procedures of the United States Congress. *See* Proceedings of General Assembly, Senate, March 31, 1983, Defendants' Appendix, Vol. I, Part I–B, at 24-25. Senator Morano then "congratulat[ed] the Transportation Committee [co-chaired by Senator DiBella] because they had the courage to defy the federal regulations," *id.* at 34. Senator Serrani, while supporting the

sets forth various provisions designed to restrict the use of tandem trailers on highways in the State, in the event that a court of competent jurisdiction enjoins enforcement of §2.[4]

On May 27, 1983, the United States commenced this case by filing a Complaint, a Motion for Preliminary Injunction,

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legislation, expressed concern about its ability to survive a challenge in Federal court. *Id.* at 37. Senator Scott, advocating that the General Assembly send "a message to the U.S. Congress," urged: "Let's fly our flag. If the Federal Government doesn't like it, let them take us to court." Senator Scot also suggested that other states in the region might join Connecticut in its stance. *Id.* at 39-40. Finally, Senator Zinsser rose to discuss his concern about the likelihood of a ban on tandem trailers. *Id.* at 47.

Similar remarks were made in the House of Representatives. *See* Proceedings of General Assembly, House of Representatives, March 30, 1983, Defendants' Appendix, Vol. I, Part I-C. Thus, Rep. Wilber acknowledged, "[W]e are defying the federal mandate," *id.* at 179. Rep. Allen spoke of "defying the federal government with this bill," *id.* at 183. Interestingly, Rep. Farr, after expressing doubt that the Connecticut statute could survive a legal challenge under the Commerce Clause, moved to amend the bill to make it explicitly consistent with the Federal Surface Transportation Assistance Act of 1982. *Id.* at 206-208. The proposed amendment was defeated. *Id.* at 210.

[4]Section 3 of the Connecticut statute is applicable "[i]n the event that a court of competent jurisdiction enjoins the state from enforcing the provisions of [§2 of the statute]." The Tandem Truck Policy Statement of the transportation Committee of the General Assembly, *see* Note 3, *supra*, makes clear that §3 was designed as part of a general scheme "to exclude these menacing double-trucks from Connecticut's highways," *id.* at 6-7. In general, §3 sets up special requirements for permitting tandem trailers and licensing their drivers, imposes special fines for infractions committed by their drivers, and creates special restrictions on the weights, configurations, and places of operation of tandem trailers.

and a Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction. The State of Connecticut filed its Answer on June 6, 1983 and its Memorandum in Opposition to Motion for Preliminary Injunction ("Connecticut Memorandum") on June 8, 1983. Also on June 8, 1983, the United States filed a Plaintiff's Reply Memorandum in Support of Motion for Preliminary Injunction. A separate set of papers was filed by the parties in connection with the United States' Motion to Preclude Evidence (filed June 3, 1983), which the court denied by ruling filed June 8, 1983. Conferences with counsel were held in chambers (partly on the record) and in open court on May 31, 1983 and June 3, 1983, at which the court considered and acted upon various applications regarding pre-trial proceedings. On June 9, 1983, a day-long evidentiary hearing on the motion for a preliminary injunction was held before the court, at which the State offered the testimony of nine witnesses on safety, legislative and regulatory issues.

II.

Proper consideration of the motion for a preliminary injunction must begin with an understanding of what this case involves. Simply stated, the Congress of the United States enacted a statute, and thereafter the Connecticut General Assembly enacted another statute. The United States asserts that the latter statute conflicts with the former and is, accordingly, pre-empted. The United States also asserts that, even if there were no Federal legislation, the Connecticut statute would work an unconstitutional interference with interstate commerce.

Where Federal and state statutes conflict, the Supremacy Clause of the United States Constitution, Art. VI, provides

that the state statute must give way.[5] A long history of law has established beyond the slightest doubt that Congress has pre-eminent authority under the Commerce Clause of the Constitution, Art. I, §8, to legislate where activities affecting interstate commerce are concerned, to pre-empt those state laws in conflict with congressional enactments, and to prohibit state regulations concerning activities having a substantial effect on interstate commerce even in the absence of any contradictory congressional enactments.[6]

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[5]The doctrine that a constitutionally enacted Federal law prevails over any competing state statute is grounded upon the mandate of our Constitution that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Const., Art. VI.

The question before this court is not whether the Federal law on tandem trailers is less reasonable or less sound than the statute enacted by the General Assembly of Connecticut. The Federal law may well entail serious risks for the driving public in Connecticut. Nevertheless, for good or for ill, it is a law enacted by our national government on a subject over which its powers are clear and complete, and Federal judges are not commissioned for the purpose of deciding cases on the basis of their personal political preferences.

Where, as in this instance, a state statute is enacted for the explicit purpose of undermining or undoing the effects of a constitutionally enacted Federal statute, the court's duty is clear, regardless of any personal view on which of the two competing laws best serves the public interest.

The doctrine of Federal supremacy is rooted in Constitution itself and is central to our concepts of nationhood. Any questions about its place in our constitutional order were definitively resolved at another courthouse, in another state, in another time: the courthouse at Appomattox.

[6]It has long been recognized that "[t]he power of Congress over interstate commerce is plenary and complete in itself, may

In general, the power of Congress to pre-empt state legislation affecting interstate commerce is sweeping. In the case before this court, it is likely that the Connecticut statute,

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be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution," and that "no form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress," *United States v. Wrightwood Dairy Co.*, 315 U.S. 110, 119, 62 S.Ct. 523, 526, 86 L.Ed. 726 (1942). There can be no question at this late date that Congress has authority to pre-empt state laws regulating activity affecting interstate commerce. *Pacific Gas & Electric Co. v. State Energy Resources Conservation and Development Commission*, ____ U.S. ____, ____, 103 S.Ct. 1713, 1720-22, 75 L.Ed.2d 752 (1983). Indeed, Congress may, under the Commerce Clause, prohibit all state regulation (and not merely such regulation as is inconsistent with Federal law) where an activity having a substantial effect on interstate commerce is involved. *Hodel v. Virginia Surface Mining & Reclamation Association*, 452 U.S. 264, 290, 101 S.Ct. 2352, 2367, 69 L.Ed.2d 1 (1981). It follows that, where Congress explicitly preempts state regulation in a field, all laws of the states purporting to regulate activity in that field are overridden under the Supremacy Clause. *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624, 633, 93 S.Ct. 1854, 1859, 36 L.Ed.2d 547 (1973). Defendants argue that Congress' power under the Commerce Clause does not reach activities whose effects upon interstate commerce are "indirect and remote," *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 41, 57 S.Ct. 615, 626, 81 L.Ed. 893 (1937). That caveat is without significance in the present case, which involves the activity of commercial trucking on federally-funded highways. That such activity has an impact on interstate commerce can hardly be doubted. *See, e.g., Raymond Motor Transportation v. Rice*, 434 U.S. 429, 98 S. Ct. 787, 54 L.Ed.2d 664 (1978). That this is an area in which Congress may appropriately legislate is therefore obvious, and the Supreme Court has recognized that Congress may properly regulate truck lengths nationwide. *See Kassel v. Consolidated Freightways Corp.*, 450 U.S. 662, 671, 101 S.Ct. 1309, 1316, L.Ed.2d 580 (1981) (Powell, J., writing for himself,

even in the absence of any congressional pre-emption, might have had an unconstitutional impact on interstate commerce.

Section 411(c) of the STAA specifically provides that no state shall prohibit tandem trailers from its highways. Thus, the STAA reveals an explicit congressional intention to pre-empt competing state legislation. Section 2 of the Connecticut statute, which announces a ban on tandem trailers in the State, does precisely what §411(c) of the STAA provided a state could not do. Section 3 of the Connecticut statute, slated to come into play if enforcement of §2 is enjoined, imposes various restrictions and regulations on those who would drive tandem trailers on State highways. Thus, §3 burdens the activity that the STAA clearly seeks to protect.[7] Hence, §3 of the Connecticut statute also appears to be pre-empted.

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and White, Blackmun, and Stevens, J.) and 691 (Rehnquist, J., dissenting on other grounds, writing for himself and Burger, Ch. J., and Stewart, J.).

In *Kassel* and *Raymond Motor Transportation*, state statutes purporting to regulate tandem rucks were held to impose a burden on interstate commerce in violation of the Commerce Clause, even in the absence of competing congressional legislation. Now that Congress has spoken, the burden on the states seeking to maintain their own regulations in this field is, of course, far greater.

[7]Taken one by one, the various provisions of §3 of the Connecticut statute, *see* note 4, *supra*, might be justified as being either in accordance with Federal law or permissible as exercises of the State's "police power," *see Goldblatt v. Hempstead*, 369 U.S. 590, 82 S.Ct. 987, 8 L.Ed.2d 130 (1962). Considered in its totality, however, §3 reveals a scheme of burdensome regulation that could only have the effect of achieving by an accumulation of petty irritations what §2 of the Connecticut statute seeks to achieve through outright prohibition. This court cannot undertake the legislaive task of separating the benign from the malignant portions of §3. Section 3 must be taken as it comes, as a unified piece of legislation. It must also be understood in the

III.

In defense of its statute, the State of Connecticut has launched an attack that is ingenious and thorough, yet ultimately unavailing. Throughout the State's case, the argument is made that tandem trailers ought to be banned, one way or another, from Connecticut's highways.[8] This court expresses no view on that question. It is not the function of this court in this case to second-guess a congressional determination.[9] Where Congress acts pursuant to its authority under the Constitution and elects to pursue a certain course of action, those who disagree with Congress ordinarily must pursue their cause through political debate and action, not through litigation.[10] Nothing in the present case presents an

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context of the "springing use" designed for it and in relation to §2, which it was designed to replace if necessary. In this light, §3 can only be viewed as part of the State's general scheme "to exclude these menacing double-trucks from Connecticut's highways," *see* note 4, *supra*. As the United States has not sought to enjoin enforcement of all aspects of §3, a more limited injunction may issue. But the foregoing principles are nevertheless applicable in this case.

[8] *See, e.g.*, Connecticut Memorandum, 1-7 32-34.

[9] A district court may not disturb Congress' rational findings by substituting its own. *Hodel v. Virginia Surface Mining & Reclamation Association, supra*, note 6, 452 U.S. at 277, 101 S.Ct. at 2360. It goes without saying that, in considering a statute, the court considers its constitutionality without presuming to pass upon its wisdom. *Lochner v. New York*, 198 U.S. 45, 75, 25 S.Ct. 539, 551, 49 L.Ed. 937 (Holmes, J., dissenting). *See* note 11, *infra*.

[10] To be sure, in the instant case defendants initially pursued their cause through legislation of their own. But they now seek to achieve in this court what they failed to gain in the Congress of the United States—to wit, a guarantee that a state may ban tandem trailers from its highways. That is an argument that must be pressed, if at all, before Congress, not here.

occasion for deviation from these settled principles of American constitutional law.

A.

It does not advance Connecticut's cause to argue that the STAA was adopted without findings of fact or the hearing of testimony.[11] Even if true, it does not follow that this or any other court sits to consider whether, in passing a particular bill, Congress deliberated with due care and reflection. Nor does it help Connecticut to argue that Congress failed to demonstrate how legislation concerning tandem trailers affected interstate commerce: that trucking involves interstate commerce is virtually a self-evident proposition.[12]

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[11]Nor is it apparent that defendants have accurately described the legislative history of the STAA or the materials available to Congress in debating the STAA. In fact, the Senate Committee on Commerce, Science, and Transportation did hold hearings and receive testimony on the section of the STAA at issue in this case. *See* Hearing Before the Committee on Commerce, Science, and Transportation of the United States Senate on S. 3044, Surface Transportation Act of 1982, Title IV—Highway Safety (1983).

The State of Connecticut has repeatedly questioned the motivations and method of operation of the legislators who voted in favor of the Federal statute at issue here. *See, e.g.*, Defendants' Response Regarding Legislative History (filed June 10, 1983). From their earliest days, the Federal courts have found such arguments irrelevant where the constitutionality of statutes is questioned. In the words of Chief Justice John Marshall, "if the act be clothed with all the requisite forms of a law, a court . . . cannot sustain a suit . . . founded on the allegation that the act is a nullity, in consequence of the impure motives which influenced certain members of the legislature which passed the law." *Fletcher v. Peck*, 6 Cranch (10 U.S.) 48, 73, 3 L.Ed. 162 (1810).

[12]*See Kassel v. Consolidated Freightways Corp., supra*, note 6, and *Raymond Motor Transportation v. Rice, supra*, note 6.

B.

It is, of course, true that a court will not lightly assume that Congress meant to pre-empt state legislation.[13] In this case, however, the words of Congress in §411(c) of the STAA are explicit. There can be no question that pre-emption of state statutes barring tandem trailers was exactly what Congress sought to effect.

The State argues that Congress failed to specify what effect on interstate commerce it sought to achieve or why a requirement such as that contained in the STAA would help promote that effect.[14] However, it is manifest that the STAA reflects a congressional interest in establishing uniform regulations governing the size, weight, and arrangements of trucks used in interstate commerce. In furtherance of that purpose, Congress adopted an approach neither irrational nor irrelevant. Nor, despite the State's argument, is it apparent that Congress need have considered other means of achieving its purposes.[15] Whether Congress chose wisely is not the issue before this court. Whether Congress made a choice that will

[13]*Jones v. Rath Packing Co.*, 430 U.S. 519, 525, 97 S.Ct. 1305, 1309, 51 L.Ed.2d 604 (1977).

[14]Connecticut Memorandum, 14-15.

[15]*Heart of Atlanta Motel v. United States*, 379 U.S. 241, 261, 85 S.Ct. 348, 359, 13 L.Ed.2d 258 (1964). For this court's purposes, the only inquiry that need be made is whether the course of action taken by Congress had rational support. *Katzenbach v. McClung*, 379 U.S. 294, 303-304, 85 S.Ct. 377, 383, 13 L.Ed.2d 290 (1964). That is as far as the inquiry goes. That other courses of action, equally plausible, perhaps even more sensible in the eyes of some, might have been chosen is a matter of no significance here. "This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent," *Stafford v. Wallace*, 258 U.S. 495, 521, 42 S.Ct. 397, 403, 66 L.Ed. 735 (1922).

ultimately prove self-defeating is not the issue before this court. To hold that *Congress* acted within its authority under the Commerce Clause, all that this court need determine is that Congress acted with respect to an activity affecting interstate commerce and that the action it took was indeed reasonably related to the regulation of that commerce.[16]

The State's argument that Congress was without authority under the Commerce Clause to enact the STAA or to pre-empt competing state legislation is thus without force. From that argument, we turn to the State's contentions that the Fifth and Tenth Amendments to the Constituion bar a congressional enactment such as the STAA.

C.

The State has also asserted that the STAA must fall as a violation of Connecticut's rights under the Due Process Clause of the Fifth Amendment to the United States Constitution, which clause is commonly deemed to incorporate guarantees of equal protection of the laws.[17] It is doubtful that the State has the legal standing requisite to make this claim; but even if the claim is properly made, it cannot succeed. In a case such as this, due process is satisfied as long as Congress' action was not patently irrational. The face of the statute itself reveals a rational purpose, that of facilitating interstate trucking. Moreover, Connecticut's apparent argument that Congress impermissibly discriminated against drivers on Interstate highways (as against drivers on other federally-funded highways) must fail, because Congress could

[16]*Heart of Atlanta Motel v. United States, supra,* note 15, 379 U.S. at 258-259, 262, 85 S.Ct. at 358, 360 (1964).

[17]*Bolling v. Sharpe,* 347 U.S. 497, 499, 74 S.Ct. 693, 694, 98 S.Ct. 884 (1954).

raionally distinguish between the two types of highways on the basis of the proportion of their costs funded by Federal contributions.[18]

D.

Throughout most of American constitutional history, the Tenth Amendment has been regarded as having little practical impact on Federal legislation. While the prevailing modern understanding of the Tenth Amendment may appear to have been reviewed afresh by the Supreme Court in *National League of Cities v. Usery*, 426 U.S. 833, 96 S.Ct. 2465, 49 L.Ed.2d 245 (1976), more recent decisions of the Court have defined with narrow precision the place of the Tenth Amendment in our Federal system of government. *Hodel v. Virginia Surface Mining and Reclamation Associa-*

[18]The proposition that a state has standing to assert its own putative claims against the Federal Government under the Fifth Amendment or, as *parens patriae*, the claims of its citizens in the same fashion is both essential to defendants' argument, *see* Connecticut Memorandum, 37-38, and completely undermined by *South Carolina v. Katzenbach*, 383 U.S. 301, 323-324, 86 S.Ct. 803, 815-16, 15 L.Ed.2d 769 (1966). Defendants concede that only a rational basis for the STAA need be shown for the statute to be upheld under the Fifth Amendment. As the accompanying text suggests, such a rational basis can easily be found. But it is also worth noting that Connecticut's attempt to assert that the STAA discriminates against Interstate System drivers (as against drivers on Primary System, and other highways receiving Federal funds) must also fail because of the utter lack of any showing that the two groups of drivers are, in fact, different individuals. It seems plausible that the people who drive Connecticut's Interstate highways are also the people who drive the State's other federally-funded roads. If that is so, it would be impossible for the STAA to discriminate against the former and in favor of the latter, no matter how much Interstate System traffic were penalized.

tion, Inc., 452 U.S. 264, 287-288, 101 S.Ct. 2352, 2366, 69 L.Ed.2d 1 (1981), set forth a rigorous test for the state asserting that Federal legislation violates the Tenth Amendment. Among other things, a state making such a claim must show that the challenged legislation poses a "wide-ranging and profound threat to the structure of State governance." *EEOC v. Wyoming*, ——— U.S. ———, ———, 103 S.Ct. 1054, 1062, 75 L.Ed.2d 18 (1983). Nothing in the record of this case or even remotely suggested by the State so much as hints that the STAA poses such a threat to "the structure of State governance" in Connecticut.

The state has argued that one form of interference worked by the STAA is that it undermines Connecticut's decision-making.[19] That argument, however, merely restates the fact that the STAA is at odds with the Connecticut statute.

It may or may not be the case that, as a consequence of the STAA, the State will, in some areas, be required to expend more money that it might otherwise have chosen to on traffic safety. But such an argument is speculative. There is a world of difference between a Federal statute that requires a state to commit funds and a statute that may have the incidental effect of increasing state spending. Deplorable as the latter consequence may be, it cannot provide a basis for a state challenge to the constitutionality of a congressional statute.

Finally, §411(c) of the STAA does not compel the State to adopt or enforce a Federal regulatory scheme.[20] Nowhere

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[19]Connecticut Memorandum, 33-34.

[20]It is obvious from the language of §411(c) of the STAA, *see* note 2, *supra*, that it imposes no regulatory scheme on the State. Thus, the State's argument that such a scheme has been imposed upon it turns out to depend on §411(a) and (d), *not* §411(c). Connecticut Memorandum, 16. Connecticut has not,

has Connecticut suggested what constitutes that scheme or how Connecticut believes itself required to implement it. Section 411(c) does require Connecticut to allow tandem trailers on certain highways. Connecticut's role is purely passive: far more affirmative enforcement is demanded of the states under the Federal statute imposing a 55-mile-per-hour speed limit on traffic using federally-funded highways.[21]

The State's concern with safety, however, merits a word of further discussion. With some misgivings about the relevance of the proposed evidence, this court permitted Connecticut to introduce testimony concerning the possible impact on highway safety of the STAA. *See* Ruling on Motion to Preclude (filed June 8, 1983), at 4-5. Having now heard that testimony, the court finds its initial doubts confirmed. Whether tandem trailers pose hazards for themselves or other drivers is a question for Congress to consider, and Congress is apparently

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however, even hinted why the invalidation of subsections (a) and (d) under the Tenth Amendment ought to result in the upholding of the Connecticut statute against a pre-emption challenge involving subsection (c). Even if all that the State says on this point were persuasive, this court would still be compelled to find the Connecticut statute pre-empted under the Supremacy Clause.

[21]It has been suggested that the 55-mile-per-hour limitation is in fact *paradigmatic* of the sort of Federal intervention that does *not* run afoul of the Tenth Amendment or the Commerce Clause. *See, e.g., District of Columbia v. Train*, 521 F.2d 971, 993 n.26 (D.C.Cir.1975). Of course, a speed limitation requires a state to commit its resources and set priorities that it might not otherwise have elected, and the limitation depends entirely upon the states for enforcement.

now considering it.[22] It is not a question that this court is institutionally equipped or constitutionally empowered to decide.

An assertion that a Federal statute may have some deleterious effect upon the people of a state does not amount to an adequate claim that the Federal statute violates the Tenth Amendment. Principles of national sovereignty outweigh even those concerns that strike the public as particularly urgent; the alternative proposed by the State would require that Federal judges regularly substitute their judgment for that of legislative and executive officials at all levels of government.

F.

The last of the State's arguments is the assertion that, in promulgating is a list of designated federally-funded highways in Connecticut, pursuant to §411(e) of the STAA, the Secretary of Transportation violated §553(c) of the Administrative Procedure Act, 5 U.S.C. §553(c), or other Federal

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[22]*See* 49 U.S.C. §2315, which provides that the Secretary, within 18 months after the passage of the STAA on January 6, 1983, must submit a detailed report to Congress on the "potential benefits and costs" of tandems to commercial interests and to the general public, including an analysis of the safety record of such longer combination commercial vehicles. This provision is similar to one contained in the STAA's predecessor, §161 of the Surface Transportation Assistance Act of 1978. Pursuant to the 1978 Act, the Secretary transmitted to Congress in August 1981 a final report entitled *An Investigation of Truck Size and Weight Limits*, which contained a detailed analysis of the costs and benefits of tandems, including their economic and safety consequences.

law.[23] As originally presented in the State's Answer, that contention was put in the form of a statement that the STAA itself violated other Federal laws. But that, of course, is absurd: one Federal law cannot violate another Federal law. If two Federal laws are in irreconcilable conflict, the later one merely repeals the earlier. Perhaps recognizing that principle, the State now argues that, not the STAA, but the regulations published pursuant to it, violated other Federal laws.

This court need not consider whether the regulations at issue were in fact promulgated in violation of the Administrative Procedure Act or any other Federal law: indeed, even the question of the constitutionality of those regulations is not presented by this case.[24] The only issue presented to

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[23]Section 553(c) of the Administrative Procedure Act (the "APA"), 5 U.S.C. §553(c), requires that, before certain regulations may be adopted, notice of their proposal must be published and interested parties must have an opportunity to comment thereon. The State contends that, in promulgating regulations pursuant to the STAA, the Secretary violated the APA. Connecticut Memorandum, 57-64. The State also argues that promulgation of the regulations did not conform to the requirement of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C), that certain regulations be preceded by an environmental impact statement, and the requirement of Executive Order No. 12291, 46 Fed.Reg. 13193 (1981), that major rules not be made without a regulatory impact analysis. Connecticut Memorandum, 47-56. While the State has now largely corrected its earlier position that the STAA *itself* violated earlier Federal statutes, not all of the corrections are coherent; *see, e.g.*, Connecticut Memorandum, 47 ("[t]he federal government in urging adoption of the STAA . . . ignored several crucial administrative procedures.").

[24]In *Georgia Department of Transportation v. Dole*, 561 F.Supp. 1024 (N.D.Ga.1983), the court found that regulations promulgated by the Secretary purportedly pursuant to the STAA (and similar to the regulations at issue here) exceeded

this court is that of whether enforcement of the Connecticut statute should be enjoined. That enforcement will be enjoined if the Connecticut statute is pre-empted by the STAA, which, in turn, must be the case unless the STAA is itself unconstitutional. Thus, it is only the legitimacy of the STAA that concerns us here. The legitimacy of regulations *under* the STAA is irrelevant, because the Connecticut statute has been attacked as inconsistent with the STAA itself and not as inconsistent with any regulations. Even if the regulations *were* unconstitutional, the Connecticut statute would *still* be pre-empted, not by the regulations, but by the STAA.

IV.

Ordinarily, an applicant for preliminary injunctive relief must show (1) irreparable injury and (2) either probable success on the merits or sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in favor of the party requesting a preliminary injunction.[25] In the case at bar, the court concludes without hesitation that the United States has shown that it will be irreparably injured by the continuing violation of the STAA, a Federal statute, that

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statutory authority and violated the APA. But the instant case is not comparable. Here the State has chosen not to sue the Secretary of Transportation, electing instead to fashion a home-made injunction in the form of a state statute. It is beyond the authority of this court simply to transmute the Connecticut statute into a Federal injunction.

In any event, the question of whether the State might be entitled to relief from the regulations promulgated by the Secretary is not relevant to the issues presented in this case, which concerns the relation of the Federal and State *statutes*, without reference to *any* regulations.

[25] *Sperry International Trade, Inc. v. Government of Israel*, 670 F.2d 8, 11 (2d Cir. 1982).

would result from failure to enjoin enforcement of the Connecticut statute; the United States has shown as well that interstate truckers would be harmed financially or through threat of arrest.[26] As the only questions that appear to be presented in this case seem, at present, to be legal ones, and as those questions have now been determined in favor of the United States, the likelihood that the United States will prevail on the merits is overwhelming.

It is not necessarily true, however, that the court must reach even those conclusions. Where (as in this case) an ongoing violation of a Federal statute is threatened and that statute specifically authorizes injunctive relief, irreparable injury may be assumed.[27] Whether the injury may be as-

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[26]*See* note 7, *supra*. *See* also Court Exhibit 1, a photographic article published in *The Hartford Courant*, June 8, 1983, p. 1, depicting signs erected by the State of Connecticut on June 7, 1983. The signs, apparently posted on interstate highways, notify truckers of the following: "Tandem Trailers Prohibited in Connecticut" under authority of Public Act 83-21. *The Hartford Courant*, "State Can Present Safety Testimony in Tandem Suit," June 9, 1983, p. C4.

A number of other states are apparently watching the Connecticut litigation closely, and they are expected to follow Connecticut's total ban on tandems if the Connecticut ban is upheld. *See id.* It appears from the legislative record of the Connecticut statute that the encouragement of just such a multistate ban on tandem trailers was contemplated and favored by sponsors of the Connecticut legislation. *See* note 3, *supra*.

[27]Where the United States sues to enjoin an ongoing violation of a Federal statute that contains a provision specifically authorizing such a suit, the Supreme Court has held the balancing of equities normally required for issuance of a preliminary injunction need not be undertaken. *United States v. City and County of San Francisco*, 310 U.S. 16, 30-31, 60 S.Ct. 749, 756-57, 84 L.Ed. 1050 (1940). The STAA contains the sort of provision in §413, 49 U.S.C. §2313. Passage of a Federal

sumed or must be demonstrated, however, makes little difference. The court finds this to be the clearest sort of case for issuance of preliminary injunctive relief.

Accordingly, the plaintiffs' motion is granted in all respects. A preliminary injunction shall enter forthwith.

It is so ordered.

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statute like the STAA is "in a sense, an implied finding that violations will harm the public and ought, if necessary, be restrained." *United States v. Diapulse Corp. of America*, 457 F.2d 25, 28 (2d Cir. 1972). Thus the precise and immediate way in which violation of the law will result in public harm need not be shown. *Id.*

NOTICE OF APPEAL

Filed United States Court of Appeals
September 26, 1983

UNITED STATES COURT OF APPEALS
For the Second Circuit

UNITED STATES OF AMERICA, ELIZABETH HANFORD DOLE, Secretary of the Department of Transportation, and R. A. BARNHART, Administrator of the Federal Highway Administration, *Plaintiffs-Appellees,*	:	
v.	:	NO. 83-6159
STATE OF CONNECTICUT, WILLIAM A. O'NEILL, in his official capacity as Governor of Connecticut, JOSEPH I. LIEBERMAN, in his official capacity as Attorney General of Connecticut, LESTER FORST, in his official capacities as Acting Commissioner of State Police of Connecticut and Commissioner of Public Safety of Connecticut, J. WILLIAM BURNS, in his official capacity as Commissioner of Transportation of Connecticut, BENJAMIN A. MUZIO, in his official capacity as Commissioner of Motor Vehicles of Connecticut. *Defendants-Appellants.*	:	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the STATE OF CONNECTICUT, WILLIAM A. O'NEILL, JOSEPH I. LIEBERMAN, LESTER FORST, J. WILLIAM BURNS, and BENJAMIN A. MUZIO, the Defendants-Appellants above-named, hereby appeal to the Supreme Court of the United States from the order of the Second Circuit affirming the order of the district court granting preliminary relief, entered in this action on September 1, 1983.

This appeal is taken pursuant to 28 U.S.C. §1254 (2).

FOR DEFENDANTS-APPELLANTS

JOSEPH I. LIEBERMAN
Attorney General

By: HENRY S. COHN
Assistant Attorney General
Counsel for Defendants

I hereby certify that a copy of the foregoing appeal was mailed to the Solicitor General of the United States, % Department of Justice, Room 5614, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20530.

By: HENRY S. COHN
Assistant Attorney General
Counsel for Defendants

STATUTES INVOLVED

SUBSTITUTE HOUSE BILL NO. 6018
PUBLIC ACT NO. 83-21

AN ACT CONCERNING TANDEM TRAILER TRUCKS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) As used in this act:

(1) "Gross weight" means the light weight of a vehicle plus the weight of any load thereon, provided, in the case of a tractor-trailer unit, "gross weight" means the light weight of the tractor plus the light weight of the trailer or semi-trailer plus the weight of the load thereon.

(2) "Semitrailer" means any vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and load rests upon or is carried by another vehicle.

(3) "Trailer" means any rubber-tired vehicle without motive power drawn or propelled by a motor vehicle, - including, but not limited to, a semitrailer.

(4) "Truck" means every motor vehicle designed, used or maintained primarily for the transportation of property.

(5) "Tractor" or "truck tractor" means a motor vehicle that is a noncargo carrying power unit used for drawing a trailer or two trailers for commercial purposes, except that a truck tractor and semitrailer engaged in the transportation of automobiles may transport motor vehicles on part of the power unit.

(6) "Tractor-trailer unit" means a combination of a tractor and trailer or a combination of a tractor and semitrailer.

(7) "Converter dolly" means an axle to which is attached a hook engaged to an eye at the rear of a trailer and normally used in conjunction with the last trailer of a commercial vehicle combination.

(8) "Commercial vehicle combination" means a combination of vehicles consisting of a truck tractor and two trailers, with the length of each trailer being not more than twenty-eight feet.

(9) "Person" means any individual, corporation, association, copartnership, company, firm or other aggregation of individuals.

Sec. 2. Section 14-261 of the general statutes is repealed and the following is substituted in lieu thereof:

a) When any occupied vehicle is drawn or towed by another vehicle upon any public highway, the distance between the towing vehicle and the vehicle being towed shall not exceed twenty feet. A rigid tow bar shall be used when towing any vehicle on any limited access highway and when towing any unoccupied vehicle on any other public highway. No [vehicle shall draw or tow] PERSON SHALL OPERATE ON ANY PUBLIC HIGHWAY A COMMERCIAL VEHICLE COMBINATION OR ANY OTHER VEHICLE WHICH DRAWS OR TOWS at the same time more than one vehicle, [upon any public highway,] including, but not limited to, a trailer which is designed or constructed so that no part of its weight except the towing device rests upon the towing vehicle, a semitrailer or a semitrailer equipped with an auxiliary front axle, but excluding a pole trailer, except that such limitation shall not apply to a combination

of vehicles coupled together by a saddlemount device used to transport motor vehicles in driveaway service when no more than two saddlemounts are used, provided equipment used in such combination shall have been approved by regulations adopted by the commissioner of motor vehicles in accordance with the provisions of §§4-166 to 4-174, inclusive, and shall comply with the safety regulations of the United States Department of Transportation. No occupied vehicle shall be pushed or otherwise propelled from the rear by another vehicle except for the purpose of obtaining emergency service to start the engine of such vehicle or to perform the immediate function of removing such vehicle from the travel lanes to a place of safety at the roadside.

(b) [Pushing] (1) ANY PERSON PUSHING, propelling, drawing or towing a motor vehicle, except as authorized by the provisions of this section shall be DEEMED TO HAVE COMMITTED an infraction.

(2) ANY PERSON OPERATING A COMMERCIAL VEHICLE COMBINATION SHALL BE FINED FIVE HUNDRED DOLLARS FOR EACH OFFENSE. THE COMMISSIONER OF MOTOR VEHICLES SHALL ALSO SUSPEND, FOR SIXTY DAYS, THE MOTOR VEHICLE REGISTRATION CERTIFICATE OR OPERATOR'S LICENSE OF ANY SUCH PERSON.

Sec. 3. (NEW) In the event that a court of competent jurisdiction enjoins the state from enforcing the provisions of §14-261 of the general statutes, as amended by §2 of this act, relating to the operation of a commercial vehicle combination, the following provisions shall apply, notwithstanding any other provision of the general statutes:

(1) A commercial vehicle combination may be operated on (A) highways which are part of the National System of

Interstate and Defense Highways and those sections of the Federal-aid Primary System which are divided highways with four or more lanes and full control of access, which highways and sections are designated by the commissioner of transportation pursuant to the Surface Transportation Assistance Act of 1982, as amended, and (B) highways designated by such commissioner pursuant to said act to provide reasonable access, and to be capable of safely accommodating commercial vehicle combinations during hours of nonpeak traffic, between (i) any highway designated under subparagraph (A) of this subdivision and (ii) any terminal, facility for food, fuel, repairs or rest, or point of loading and unloading for household goods carriers, located not more than one mile from any highway designated under subparagraph (A) of this subdivision. If a commercial vehicle combination consists of two semitrailers or a trailer drawing a semitrailer, such trailers shall be coupled by a converter dolly. The commissioner of transportation shall adopt regulations in accordance with chapter 54 of the general statutes establishing permissible routes, hours of operation and braking, maintenance and other safety standards for commercial vehicle combinations.

(2) (A) The following vehicles shall not be operated on any highway or bridge without a special written permit from the commissioner of transportation, as provided in §14-270 of the general statutes, specifying the conditions under which they may be so operated: A vehicle or combination of a vehicle and a trailer which is longer than sixty feet except a vehicle or combination of a vehicle and a trailer loaded with poles, lumber, piling or structural units which, including its load, does not exceed eighty feet in length, provided that a permit shall not be required for a tractor-trailer unit. Such permit shall not be required in the case of a trailer designed and used exclusively for transporting boats when the gross weight of such boats does not exceed forty thousand pounds.

(B) The maximum length of the semitrailer portion of a tractor-trailer unit shall be forty-eight feet. Such length limitation and the length limitation described under subdivision (8) of §1 of this act shall be exclusive of safety and energy conservation devices, such as rear view mirrors, turn signal lamps, marker lamps, steps and handholds for entry and egress, flexible fender extensions, and flaps and splash and spray suppressant devices, load-induced tire bulge, refrigeration units, air compressors or air shields and other devices, which the Secretary of the federal Department of Transportation may interpret as necessary for the safe and efficient operation of such vehicles, provided no such device has by its design or use the capability to carry cargo. Violation of any provision of this section shall be an infraction.

(3) The commissioner of transportation, in consultation with the commissioner of public safety, shall establish staging areas for commercial vehicle combinations adjacent to highways designated by the commissioner of transportation under subdivision (1) of this subsection. Any operator of such a combination shall utilize such areas for decoupling and leaving behind the second trailer if he plans to operate the vehicle on a highway not so designated.

(4) No commercial vehicle combination shall be operated on any highway or bridge without a special permit from the commissioner of transportation specifying the period, route and any other conditions for which such vehicle may be operated, as provided under the provisions of this section and the regulations adopted under subdivision (1) of this section. No person may obtain or hold such a permit without a valid class 1A license or its equivalent as approved by the commissioner of motor vehicles. Any person who either operates a commercial vehicle combination without a permit, or operates a commercial vehicle combination in violation of any provision of a permit, shall be fined five hundred

dollars. The commissioner of motor vehicles shall also suspend, for sixty days, the motor vehicle registration certificate or operator's license of any such person.

(5) Any person operating a commercial vehicle combination at a rate of speed specified under subsection (b) of §14-219 of the general statutes or in violation of any provision of §14-240 of the general statutes shall be fined not less than one hundred dollars nor more than one hundred fifty dollars. Any person operating a commercial vehicle combination at a rate of speed specified under subsection (c) of §14-219 shall be fined not less than one hundred fifty dollars nor more than two hundred dollars.

(6) The commissioner of motor vehicles shall establish a class 1A license for motor vehicle operators who are eligible to operate commercial vehicle combinations. To obtain a class 1A license, the operator shall demonstrate personally to the commissioner, his deputy, a motor vehicle inspector or an agent of the commissioner that he (A) has held a Class 1 license for at least three years, (B) has a level of motor vehicle operating experience satisfactory to the commissioner and (C) has not violated any of the provisions of §14-219, 14-222 or 14-224 or subsection (a) of §14-227a of the general statutes, or any similar provisions of the laws of any other state or any territory, or been convicted of, or forfeited any bond taken for appearance for, or had his case nolled upon payment of any sum of money in connection with, or received a suspended judgment or sentence for, a violation of any of said provisions, or a second violation within a twelve-month period of the provisions of §§14-230 to 14-249, inclusive, of the general statutes, or of any similar provisions of the laws of any other state or any territory, or been held or found criminally responsible in connection with any motor vehicle accident resulting in the death of any person. The commis-

sioner of motor vehicles shall recognize any reciprocal agreement between other states concerning the licensing of such operators, if such an agreement provides for at least the same qualifications for commercial vehicle combination operators as provided in this section.

Sec. 4. (NEW) Notwithstanding any other provision of the general statutes, the following vehicles shall not be operated on any highway or bridge without a special written permit from the commissioner of transport .tion, as provided in §14-270 of the general statutes, specifying the conditions under which they may be so operated: A vehicle, combination of a vehicle and a trailer, or commercial vehicle combination if required under federal law, which is wider than eight feet six inches, including its load, but not including reasonably sized mirrors and any of the following safety devices which protrude not more than three inches from each side of the vehicle: Turn signals, marker lamps, steps and handholds for entry and egress, flexible fender extensions, mud flaps and splash suppressant devices, load induced bulge and any other device which the commissioner of transportation determines is necessary for the safe and efficient operation of such a vehicle or combination, provided no such device has by its design or use the capability to carry cargo. Such permit shall not be required in the case of (i) a school bus equipped with a folding stop sign or exterior mirror, as approved by the commissioner of motor vehicles, which results in a combined width of bus and sign or bus and mirror in excess of that established by this section, (ii) farm equipment or (iii) a vehicle or a combination of a vehicle and trailer loaded with hay or straw.

Sec. 5. This act shall take effect from its passage.

Approved April 5, 1983

LENGTH LIMITATIONS ON FEDERALLY ASSISTED HIGHWAYS

Sec. 411. (a) No State shall establish, maintain, or enforce any regulation of commerce which imposes a vehicle length limitation of less than forty-eight feet on the length of the semitrailer unit operating in a truck tractor-semitrailer combination, and of less than twenty-eight feet on the length of any semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination, on any segment of the National System of Interstate and Defense Highways and those classes of qualifying Federal-aid Primary System highways as designated by the Secretary, pursuant to subsection (e) of this section.

(b) Length limitations established, maintained, or enforced by the States under subsection (a) of this section shall apply solely to the semitrailer or trailer or trailers and not to a truck tractor. No State shall establish, maintain, or enforce any regulation of commerce which imposes an overall length limitation on commercial motor vehicles operating in truck-tractor semitrailer or truck tractor semitrailer, trailer combinations. No State shall establish, maintain, or enforce any regulation of commerce which has the effect of prohibiting the use of trailers or semitrailers of such dimensions as those that were in actual and lawful use in such State on December 1, 1982. No State shall establish, maintain, or enforce any regulation of commerce which has the effect of prohibiting the use of existing trailers or semitrailers, of up to twenty-eight and one-half feet in length, in a truck tractor-semitrailer-trailer combination if those trailers or semitrailers were actually and lawfully operating on December 1, 1982, within a sixty-five-foot overall length limit in any State.

(c) No State shall prohibit commercial motor vehicle combinations consisting of a truck tractor and two trailing units

on any segment of the National System of Interstate and Defense Highways, and those classes of qualifying Federal-aid Primary System highways as designated by the Secretary pursuant to subsection (e) of this section.

(d) The Secretary is authorized to establish rules to implement the provisions of this section, and to make such determinations as are necessary to accommodate specialized equipment (including, but not limited to, automobile transporters) subject to subsections (a) and (b) of this section.

(e) (1) The Secretary shall designate as qualifying Federal-aid Primary System highways subject to the provisions of subsections (a) and (c) those Primary System highways that are capable of safely accommodating the vehicle lengths set forth therein.

(2) The Secretary shall make an initial determination of which classes of highways shall be designated pursuant to paragraph (1) wtihin 90 days of the date of enactment of this section.

(3) The Secretary shall enact final rules pursuant to paragraph (1) no later than two hundred and seventy days from the date of enactment of this section and may revise such rules from time to time thereafter.

(f) For the purposes of this section, "truck tractor" shall be defined as the noncargo carrying power unit that operates in combination with a semitrailer or trailer, except that a truck tractor and semitrailer engaged in the transportation of automobiles may transport motor vehicles on part of the power unit.

No. 83-870

In the Supreme Court of the United States

OCTOBER TERM, 1983

STATE OF CONNECTICUT, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION TO AFFIRM

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QUESTIONS PRESENTED

1. Whether Section 411 of the Surface Transportation Assistance Act of 1982, 96 Stat. 2159, which authorizes certain tandem trailers to use the federally-funded interstate highway systems, preempts subsequently-enacted laws of the State of Connecticut that prohibit or severely restrict operation of such trailers on those highways in the State.

2. Whether the preemption of state law effected by Section 411 of the Surface Transportation Assistance Act of 1982 violates the Tenth Amendment.

TABLE OF CONTENTS

Page

Opinions below 1

Jurisdiction 1

Statutes involved 2

Statement 2

Argument 5

Conclusion 12

TABLE OF AUTHORITIES

Cases:

FERC v. *Mississippi*, 456 U.S. 742 8

Hodel v. *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264 ..... 5, 6, 7, 8

Kassel v. *Consolidated Freightways Corp.*, 450 U.S. 662 ..... 2, 7

Raymond Motor Transportation, Inc. v. *Rice*, 434 U.S. 429 2

Silkwood v. *Kerr-McGee Corp.*, No. 81-2159 (Jan. 11, 1984) 11

South Carolina State Highway Dep't v. *Barnwell Brothers*, 303 U.S. 177 5

Constitution and statutes:

U.S. Const. :

Art. I, § 8 (Commerce Clause) 8, 11

Art. VI, Cl. 2 (Supremacy Clause) 5

Amend. X 6, 7

Page

Constitution and statutes—Continued:

Federal-Aid Highway Act of 1956, 23 U.S.C. 101 *et seq.* 2
23 U.S.C. 103(b) 2
23 U.S.C. 103(e)(1) 2
23 U.S.C. (1976 ed.) 127 2
Surface Transportation Assistance Act of 1982, Pub. L. No. 97-424, 96 Stat. 2097 *et seq.* :
§ 411, 96 Stat. 2159-2160, to be codified at 49 U.S.C. 2311 ..... 2, 3, 4, 6, 7, 8, 9, 10
§ 411(a), 96 Stat. 2159, to be codified at 49 U.S.C. 2311(a) 3
§ 411(b), 96 Stat. 2159, to be codified at 49 U.S.C. 2311(b) 3, 10
§ 411(c), 96 Stat. 2159-2160, to be codified at 49 U.S.C. 2311(c) 3, 8, 9, 10
§ 411(e), 96 Stat. 2160, to be codified at 49 U.S.C. 2311(e) 3, 9
Conn. Pub. Act No. 83-21 2
§ 2 ..... 3, 4, 8, 9
§ 3 ..... 8, 9, 11
§ 3(1) 3, 4, 9, 10, 11
§ 3(2) 3, 10, 11
§ 3(4) 4, 10, 11

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MOTION TO AFFIRM

Pursuant to Rule 16.1 of the Rules of this Court, the Solicitor General, on behalf of the appellees, moves that the judgment of the court of appeals be affirmed.

OPINIONS BELOW

The judgment order of the court of appeals (J.S. App. 2a-3a) is not reported. The opinion of the district court (J.S. App. 7a-27a) is reported at 566 F. Supp. 571.

JURISDICTION

The judgment of the court of appeals was entered on September 1, 1983. A notice of appeal (J.S. App. 28a-29a) was filed on September 26, 1983. The jurisdictional statement was filed on November 25, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(2).

STATUTES INVOLVED

Pertinent portions of Section 411 of the Surface Transportation Assistance Act of 1982, Pub. L. No. 97-424, 96 Stat. 2159-2160, to be codified at 49 U.S.C. 2311, are reproduced at J.S. App. 37a-38a. Conn. Pub. Act No. 83-21 is reproduced at J.S. App. 30a-36a.

STATEMENT

1. The Federal-Aid Highway Act of 1956, 23 U.S.C. 101 *et seq.*, authorizes the establishment of a national system of highways. Under this Act, the United States provides states with stipulated percentages of the cost of construction of highways within the various Federal-Aid Highway Systems, including the "Interstate System" and the "Federal-Aid Primary System."[1] Prior to 1983, federal law imposed no limitations on the length of trucks traveling on federally assisted highways; moreover, certain federal weight and width limitations applied only to vehicles traveling on the Interstate Highway System. See 23 U.S.C. (1976 ed.) 127. No federal size standards were imposed on vehicles traveling on the other Federal-Aid Highway Systems. Accordingly, to the extent consistent with the constraints of the Commerce Clause, the states were free to regulate the size of vehicles traveling on those highways.[2]

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[1]The United States pays 90% of the cost of construction of highways in the "Interstate System," which consists of highways located so as to connect the nation's major cities and industrial centers by routes that are as direct as possible. 23 U.S.C. 103(e)(1). The federal share of the cost of construction of highways in the "Federal-Aid Primary System," which "consist[s] of an adequate system of connected main highways, selected or designated by each State through its State highway department, subject to the approval of the Secretary [of Transportation]" (23 U.S.C. 103(b)), is 75%. Two other Federal-Aid Highway Systems established pursuant to the Highway Act — the Secondary and Urban Systems — are not relevant to this litigation.

[2]See, *e.g.*, *Kassel* v. *Consolidated Freightways Corp.*, 450 U.S. 662 (1981) (invalidating Iowa statute); *Raymond Motor Transportation, Inc.* v. *Rice*, 434 U.S. 429 (1978) (invalidating Wisconsin regulation).

In Section 411 of the Surface Transportation Assistance Act of 1982 (STAA), 96 Stat. 2159-2160, to be codified at 49 U.S.C. 2311, Congress restricted the scope of state regulation of vehicle size on portions of the Federal-Aid Interstate and Primary Highway Systems. Section 411(a) proscribes enactment or enforcement of any state law imposing a length limitation of less than 48 feet on the trailer portion of a truck tractor-semitrailer combination or less than 28 feet on either trailer portion of a truck tractor-tandem trailer combination. Section 411(b) makes clear that state length limitations permitted under Section 411(a) must relate exclusively to the cargo-carrying portion of the tractor-trailer combination and proscribes state laws directed at the length of overall combinations. Section 411(c) bars state prohibitions on tandem trailers. The proscriptions of Section 411(a) and (c) apply to all elements of the Interstate Highway System and to those portions of the Federal-Aid Primary System determined by the Secretary of Transportation to be "capable of safely accommodating the vehicle lengths" that would be allowed under their terms. STAA Section 411(e), to be codified at 49 U.S.C. 2311(e).

In response to the enactment of the STAA, the State of Connecticut adopted Conn. Pub. Act No. 83-21. Section 2 of that statute flatly prohibits operation of tandem trailers on any highway in Connecticut. Section 3 of the state statute, which, by its terms, goes into effect only in the event that a court enjoins the State from enforcing Section 2, imposes various less sweeping restrictions on operation of tandem trailers in Connecticut. Under Section 3(1) tandem trailers may be operated only on the Interstate System and on those Primary System highways designated by state highway officials.[3] Section 3(2) of the state statute permits

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[3]The statute also authorizes operation of tandem trailers on short stretches of other highways, designated by state highway officials, linking the major routes otherwise designated with truck stops and freight terminals.

operation of tandem trailers (and most other truck-trailer combinations) longer than 60 feet on Connecticut highways only if a special permit "specifying the conditions under which they may be * * * operated" is secured from the State. Finally, yet another permit, "specifying the period, route and any other conditions for which [a tandem trailer] may be operated," is required by Section 3(4) of Conn. Pub. Act No. 83-21.

2. On April 29, 1983, Connecticut police enforced Section 2 of Conn. Pub. Act No. 83-21, issuing a summons to a driver operating a tandem truck on Interstate Highway 95 within its boundaries and escorting the driver and vehicle out of the State (C.A. App. 18-25).[4] Federal officials advised Governor O'Neill that the state statute was inconsistent with Section 411 of the STAA. On May 27, 1983, after Connecticut officials had indicated to federal officials that they intended to continue to enforce the state statute, the United States commenced this action in the United States District Court for the District of Connecticut, seeking preliminary and permanent injunctive relief prohibiting appellants from enforcing portions of the state statute inconsistent with the STAA. After conducting an evidentiary hearing sought by appellants, the district court entered a preliminary injunction (J.S. App. 4a-6a) restraining them from enforcing the State's ban on tandem trailers (Section 2), the requirement that highways to be used by tandem trailers be approved by *state* officials (Section 3(1)), and the special permit requirements of Section 3(2) and (4), as to those highways covered by the preemptive provisions of Section 411 of the STAA. The district court held that the

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[4] "C.A. App." denotes the Joint Appendix filed in the court of appeals.

challenged provisions of state law were inconsistent with, and preempted by, the STAA (J.S. App. 15a).[5]

The court of appeals affirmed "substantially for the reasons set forth" in the district court's opinion (J.S. App. 3a).

ARGUMENT

The decision of the courts below is clearly correct. No question warranting plenary consideration is presented.

1. The Court has long recognized that motor vehicle size and weight are matters on which Congress may legislate under the Commerce Clause. In *South Carolina State Highway Dep't v. Barnwell Brothers*, 303 U.S. 177, 189-190 (1938), in upholding state weight and width restrictions upon trucks against the claim that they unduly burdened interstate commerce and accordingly ran afoul of the Commerce Clause, the Court emphasized that

> Congress, in the exercise of its plenary power to regulate interstate commerce, may determine whether the burdens imposed on it by state regulation, otherwise permissible, are too great, and may, by legislation designed to secure uniformity or in other respects to protect the national interest in commerce, curtail to some extent the state's regulatory power.

Such Commerce Clause legislation is permissible so long as "Congress acted rationally in adopting a particular regulatory scheme." *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 276 (1981). State laws that are inconsistent with such valid federal enactments are void under the Supremacy Clause of the Constitution, Art. VI, Cl. 2.

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[5]Although the district court has thus far granted only a preliminary injunction, its opinion reflects that the legal issues in this case have been "determined in favor of the United States" (J.S. App. 26a).

Appellants' contention (J.S. 6-11) that Section 411 of the STAA violates the Tenth Amendment by preempting state laws governing tandem trailers is frivolous. In *Virginia Surface Mining & Reclamation Ass'n*, the Court summarized its Tenth Amendment jurisprudence (452 U.S. at 287-288 (footnote omitted; emphasis in original)):

> [I]n order to succeed, a claim that congressional commerce power legislation is invalid under the reasoning of *National League of Cities* [v. *Usery*, 426 U.S. 833 (1976),] must satisfy *each* of three requirements. First, there must be a showing that the challenged statute regulates the "States as States." *Id.*, at 854. Second, the federal regulation must address matters that are indisputably "attributes of state sovereignty." *Id.*, at 845. And third, it must be apparent that the States' compliance with the federal law would directly impair their ability "to structure integral operations in areas of traditional governmental functions." *Id.*, at 852.

Appellants plainly cannot satisfy these requirements, for Section 411 of the STAA in no way affects the State's ability to "structure integral operations"; indeed, appellants do not assert that it does.[6] And even if the foregoing requirements

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[6]Appellants complain (J.S. 9) that the district court was concerned only with the third part of the Tenth Amendment rule stated in *Virginia Surface Mining & Reclamation Ass'n*. Because that case makes clear that appellants had the burden of establishing *each* of the three requirements it outlines, the district court's failure to discuss each of the three requirements is wholly unremarkable. In any event, we note that, contrary to the contention of appellants (J.S. 8) and the amici curiae (Br. of Council of State Gov'ts 10-11), Section 411 does not in any meaningful sense regulate "States as States." Although Section 411 is in form directed to the states, declaring that "no State shall prohibit * * *," its object is obviously the regulation of private commercial practices. The form of expression chosen by Congress simply makes explicit the preemptive effect of the federal determination that tandem trailers below a certain size shall be lawful. Recognizing that their argument elevates form over substance, the amici curiae proceed to

were met, appellants' Tenth Amendment challenge would still fail, because "[t]here are situations in which the nature of the federal interest advanced may be such that it justifies state submission." *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. at 288 n.29. Given that interstate trucking over Federal-Aid highways is the lifeblood of the nation's commerce, and the substantial burdens imposed on commerce by nonuniform regulation of truck size, see *Kassel* v. *Consolidated Freightways Corp.*, 450 U.S. at 674-675 (opinion of Powell, J.), this is plainly such a situation.

Appellants complain instead that Section 411 of the STAA, by banning state interference with operation of double trailers, "significantly interferes with Connecticut's ability to formulate and implement policy in the vital area of highway safety" (J.S. 9). But this argument proves too much, because every state statute presumably reflects formulation and implementation of policy judgments. This Court, however, has repeatedly rejected the contention that the Tenth Amendment precludes federal preemption of state regulation of private commerce. Thus, in *Virginia Surface Mining & Reclamation Ass'n*, the Court observed (452 U.S. at 291) that "*National League of Cities* explicitly reaffirmed the teaching of earlier cases that Congress may, in regulating private activities pursuant to the commerce power, 'pre-empt express state-law determinations contrary to the result which has commended itself to the collective wisdom of Congress . . . .' 426 U.S., at 840," adding that

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suggest (Br. 11) that our argument "shows that the constitutional plan can readily be subverted if Tenth Amendment protection depends on whether a federal law regulates states *qua* states." But in *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. at 287, the Court recently affirmed, without dissent, that the "constitutional plan" requires no different rule. No reason for reconsideration of that conclusion is presented.

"there are no Tenth Amendment concerns in such situations" (452 U.S. at 291 n.31). See also *FERC* v. *Mississippi*, 456 U.S. 742, 759 (1982).[7]

2. Appellants contend (J.S. 11-24), alternatively, that the provisions of Section 3 of Conn. Pub. Act No. 83-21, the enforcement of which was enjoined by the district court (see page 4, *supra*), do not conflict with, and accordingly are not preempted by, Section 411 of the STAA.[8] There is no merit to this contention.

As the district court observed (J.S. App. 15a n.7), Section 3 — designed to spring into use if Section 2 were found to be invalid[9] — contains a "scheme of burdensome regulation that could only have the effect of achieving by an accumulation of petty irritations what § 2 of the Connecticut statute seeks to achieve through outright prohibition." Contrary to appellants' contention (J.S. 13), the enjoined provisions of state law are in clear conflict with Section 411, and accordingly are unenforceable.[10]

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[7]Appellants also claim (J.S. 10) that Section 411 will indirectly impose certain costs upon the State or its citizens. Even if these financial burdens turned out to be genuine, it is settled that such effects do not establish a Tenth Amendment shield against preemptive federal legislation. *FERC* v. *Mississippi*, 456 U.S. at 770 n.33; *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. at 292 n.33. It is equally clear that no authority supports the peculiar assertion of the amici (Br. of Council of State Gov'ts 6-8) that Congress must *demonstrate the* necessity of its actions when it exercises its Commerce Clause authority in a way that preempts state law.

[8]Appellants do not question the determination of the courts below that the flat prohibition on tandem trailers contained in Section 2 of Conn. Pub. Act No. 83-21 is irreconcilable with Section 411(c) of the STAA.

[9]State legislators enacted Pub. Act No. 83-21 well aware that it was inconsistent with federal law, and that its provisions, especially Section 2, were unlikely to survive judicial scrutiny (see J.S. App. 10a-11a n.3).

[10]Appellants argue (J.S. 13, 19) that the district court's decision rests, improperly, not upon the provisions actually enjoined, but upon its perception that the state legislature's motivation for adopting the

Section 3(1) of Pub. Act No. 83-21 allows operation of tandem trailers only on those Federal-Aid Primary System highways designated by state officials, even though Section 411(c) of the STAA bans state prohibition of tandem trailers on *any* Primary System highway designated by the proper federal officials pursuant to Section 411(e). The conflict is self-evident. Appellants suggest (J.S. 16) that the substitution, in the state law, of Connecticut's own Commissioner of Transportation for the federal Secretary of Transportation, designated by Section 411 as the official empowered to decide which Primary System highways should be open to tandem trailers, is somehow a purely ministerial change intended to identify a "state liaison official to coordinate State compliance with federal requirements." But this imaginative reconstruction of the state statute cannot disguise the fact that Section 3(1), on its face, vests the Commissioner of Transportation with substantive authority to determine which Primary System highways are suitable for tandem trailers and to override any inconsistent determination by the Secretary of Transportation. Moreover, appellants overlook the fact that the operation of the

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statute was wrongful. On the contrary, the district court properly relied upon both the language and legislative history of Section 3 that makes clear that the enjoined provisions have the purpose and effect of precluding the use of tandem trailers explicitly authorized by federal law. See J.S. App. 11a n.4, 15a-16a n.7.

Nor is there any merit to appellants' claim (J.S. 19) that the district court failed separately to determine the validity of each challenged provision of Conn. Pub. Act No. 83-21. The validity of the challenged subsections of Section 3 was determined separately from that of Section 2. And although the district court intimated (J.S. App. 15a-16a n.7) that Section 3 might be invalidated as a whole, it noted that because the federal government had carefully tailored its request for injunctive relief, the court would not consider any broader judgment. The actual injunction issued was limited to Section 2 and specified provisions of particular subsections of Section 3 as applied in specifically identified circumstances (see J.S. App. 6a; see page 4, *supra*). As explained in the text, this injunction is clearly required by settled principles of preemption.

district court's injunction is confined to "those Primary System highways designated by the Federal Highway Administration pursuant to § 411(e) of the [STAA] of 1982" (J.S. App. 6a). Thus, to the extent the State applies its prohibition in the manner appellants have suggested, to confine tandems to the Interstate System and to federally designated Primary System highways, the district court's injunction presents no impediment to its enforcement.

The permit requirements of Section 3(2) and (4) enjoined by the district court are also preempted by Section 411. Section 3(2) bars operation of tandem trucks (and most other trucks) over 60 feet in overall length on Connecticut highways unless a special permit has been obtained from the State's Commissioner of Transportation after payment of a fee. This provision directly conflicts with STAA Section 411(b), which provides that any state truck length limitations or regulatory scheme applicable to the Interstate Highway System or designated portions of the Primary System must be framed in terms of the size of the trailer portion of the vehicle, and which bans overall length regulation. Section 3(2), like Section 3(4), which imposes yet another special permit requirement upon all tandem trailers, also conflicts with Section 411(c) of the STAA, which bars state prohibitions upon tandem trailers.

As with Section 3(1), appellants seek to adduce innocent applications of these requirements, suggesting (J.S. 16-19) that they are merely intended to ensure that truckers are notified of the requirements under which they may lawfully operate. And appellants seem to imply (without stating) that these requirements would be limited to those permissible under federal law. But neither Section 3(2) nor Section 3(4) is framed in such narrow terms. The nature of the conditions of operation that may be attached to permits under Section 3(2) is not limited. And Section 3(4) permits

must specify the period of the license, permissible routes, and any conditions established by the Commissioner of Transportation under regulations (issued under Section 3(1)) governing, inter alia, "permissible routes [and] hours of operation." Plainly, the scope of the restrictions contemplated by Section 3(2) and (4) is not limited in the fashion appellants suggest.[11] Especially in light of legislative history indicating the State's intention to bar tandem trailers if at all possible (see J.S. App. 10a-11a nn.3 & 4), the district court properly determined that the State's permit requirements impermissibly interfered with the policy established by Congress.

The enjoined provisions of state law thus encroach upon a field Congress has legitimately occupied under the Commerce Clause, directly conflict with provisions of federal law, and stand as an obstacle to the accomplishment of the full purposes and objectives of Congress reflected in Section 411 of the STAA. They accordingly are preempted under each of the alternative tests recognized by this Court. See *Silkwood* v. *Kerr-McGee Corp.*, No. 81-2159 (Jan. 11, 1984), slip op. 8-9.[12]

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[11]The provision of Section 3(1) for promulgation of state regulations governing permissible routes renders implausible any suggestion that permit conditions are intended only to give notice and facilitate enforcement of the federal designations of permissible routes for tandem trailers.

[12]Contrary to appellants' apparent contention (J.S. 24-25), the district court did not hold Section 3 of Conn. Pub. Act No. 83-21 invalid on the ground that it unduly burdened interstate commerce and accordingly conflicted with the Commerce Clause itself. There was no need for the courts below to consider that issue. We note, however, that this Court's precedents suggest that the provisions of Conn. Pub. Act No. 83-21 imposed an impermissible burden on commerce (see page 2 note 2, *supra*).

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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JANUARY 1984

DOJ-1984-01

No. 83-870

In The Supreme Court of the United States

OCTOBER TERM, 1983

STATE OF CONNECTICUT, WILLIAM A. O'NEILL, in his official capacity as Governor of Connecticut, JOSEPH I. LIEBERMAN, in his official capacity as Attorney General of Connecticut, LESTER FORST, in his official capacities as Acting Commissioner of State Police of Connecticut and Commissioner of Public Safety of Connecticut, J. WILLIAM BURNS, in his official capacity as Commissioner of Transportation of Connecticut, BENJAMIN A. MUZIO, in his official capacity as Commissioner of Motor Vehicles of Connecticut,

Appellants

v.

UNITED STATES OF AMERICA, ELIZABETH HANFORD DOLE, Secretary of the Department of Transportation, and R. A. BARNHART, Administrator of the Federal Highway Administration,

Appellees

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

APPELLANTS' REPLY BRIEF

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Table of Contents Page

Reply Brief..... 1

Table of Authorities

Cases

Exxon v. Governor of Maryland,
437 U.S. 117 (1978)..... 3

Hodel v. Virginia Surface Mining
& Reclamation Ass'n, Inc.,
452 U.S. 286 (1981)..... 2

Huron Cement Co. v. Detroit,
362 U.S. 440 (1960)..... 3

National League of Cities v. Usery,
426 U.S. 833 (1976)..... 2

Raymond Motor Transportation Inc.
v. Rice, 434 U.S. 429 (1978)..... 2,3

Statutes **Page**

Surface Transportation Assistance Act..... passim

Conn. Public Act 83-21..... passim

Regulations

DOT regs. September 14, 1983.... 4

In the Supreme Court of the United States
October Term, 1983

No. 83-870
State of Connecticut, Et Al., Appellants
V.
United States of America, Et Al.

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT

APPELLANTS' REPLY BRIEF

Appellants make the following reply to the Appellees' Motion to Affirm:

1. The United States contends that the State of Connecticut enacted its Public Act on tandem trailers "in response to the STAA" (at 3). The evidence is quite to the contrary. Connecticut has banned tandems at least since 1930, and probably as early as 1921. Conn.

Gen. Stats. Secs. 1649, 1655 (1930), P.A. 334 (1921) Secs. 16, 22.

Thus it is the federal government that intrudes on an area of state sovereignty where "deference to state regulations" has been so great. Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429, 443 (1978). This intrusion impairs Connecticut's ability to effectively protect its citizenry. National League of Cities v. Usery, 426 U.S. 833, 854-5 (1976).

2. Connecticut, contrary to the United States' claim at 6, has asserted that the STAA will affect the State's ability to "structure integral operations." Hodel v. Virginia Surface Mining & Reclamation Ass'n, Inc., 452 U.S. 286, 288 (1981). The implementation of STAA Sec. 411(c) interfers with Connecticut's genuine and long-standing concern for highway safety. In addition, increased state funds and revenues will be expended as a result of an increased accident rate and greater damage to highways caused by tandems.

Unlike the State of Wisconsin in Raymond, the State of Connecticut has developed in the trial court an uncontroverted record establishing the safety hazards of tandem trucks and the interference of the STAA with state sovereignty.

3. With regard to preemption of Section 3 of the Connecticut Tandem Truck Act (P.A. 83-21), the federal government is "seeking out conflicts between state and federal regulations where none clearly exists." Exxon v. Governor of Maryland, 437 U.S. 117, 120 (1978), citing Huron Cement Co. v. Detroit, 362 U.S. 440 (1960). Section 3(1)(A) specifically states that tandems shall be permitted on all routes "designated by the Commissioner of Transportation pursuant to the [STAA]." Section 3(2)(A) is entirely misread by the federal government. As demonstrated in Appellant's brief at 11, note 13, Section 3(2)(A) does not apply to tandems at all. While Section 3(4) requires a permit for tandems, the sole purpose is to specify the "period, route and any other conditions for which such vehicle may be

operated."

The effect of striking down P.A. 83-21(3) is to eliminate any role for the states in the highway safety process. Even the federal Department of Transportation in its proposed regulations of September 14, 1983 has not gone that far.

Respectfully submitted,

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Appellants,

v.

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BRIEF OF THE COUNCIL OF STATE GOVERNMENTS, THE NATIONAL CONFERENCE OF STATE LEGISLATURES, THE NATIONAL ASSOCIATION OF COUNTIES, THE NATIONAL LEAGUE OF CITIES, THE INTERNATIONAL CITY MANAGEMENT ASSOCIATION, AND THE UNITED STATES CONFERENCE OF MAYORS AS AMICI CURIAE IN SUPPORT OF A PLENARY HEARING AND REVERSAL OF THE DECISION BELOW

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QUESTION PRESENTED

Whether it is constitutional for Congress to override a fundamental state power without demonstrating any justification or necessity.

TABLE OF CONTENTS

	Page
Interest of the Amici	1
Statement	2
1. State Regulation of, and the Dangers Posed by, Tandem Trailers	2
2. The Congressional Act Precluding States From Banning or Limiting the Length of Tandems	3
3. The Decisions Below	4
This Case Presents Important Issues Which Require Plenary Hearing and Decision By This Court	5
1. Introduction	5
2. Section 411 of the STAA Is Unconstitutional Because It Nullifies an Important State Power Without Any Demonstration of Justification or Necessity	6
3. Points Raised In Defense Of § 411 Demonstrate the Need For Plenary Hearing	9
Conclusion	11

TABLE OF AUTHORITIES

Cases: Page

Bibb v. Navajo Freightlines, Inc., 359 U.S. 520 (1959) 7
FERC v. Mississippi, 456 U.S. 742 (1982) 7, 8, 11
Fullilove v. Klutznick, 448 U.S. 448 (1980) 7, 8
Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964) 7, 8
Hodel v. Virginia Surface Mining and Reclamation Association, 452 U.S. 264 (1981) 7, 8
Kassel v. Consolidated Freightways Corporation, 450 U.S. 622 (1981) 2, 7, 8, 9
Katzenbach v. McClung, 379 U.S. 294 (1964) 7, 8
National League of Cities v. Usery, 426 U.S. 833 (1976) 6
Pennhurst School and Hospital v. Halderman, 451 U.S. 1 (1981) 9
Raymond Motor Transportation, Inc. v. Rice, 434 U.S. (1981) 7, 8
South Carolina State Highway Department v. Barnwell Brothers, Inc., 303 U.S. 177 (1938) 6

Constitution and Statutes:

Amendment X, United States Constitution 5, 6, 8, 10, 12
Connecticut Public Act 83-21 (1983) 4
Surface Transportation Assistance Act, 49 U.S.C. § 2311 ..... 3, 4, 5, 8, 9, 10

Congressional Hearings:

Committee on Commerce, Science, and Transportation, *Hearings on Highway Revenue Act of 1982*, U.S. Senate (December 3, 1982) 4

Miscellaneous:

Federal Highway Administration, *The Effect of Truck Size and Weight on Accident Experience and Traffic Operations* (1981) 2
Insurance Institute for Highway Safety, *Status Report* (1983) 2, 3
Madden, *The Constitutional and Legal Foundations of Federal Grants*, in *Federal Grant Law* (American Bar Association, 1982) 10

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INTEREST OF THE AMICI

Amici are organizations which represent state and local governments located throughout the United States. *Amici* and their members have a vital interest in the powers and responsibilities of state governments, and in legal issues affecting such powers and responsibilities.

As made clear *infra*, issues of profound consequence for state authority are presented by this case. *Amici* are therefore submitting this brief to assist the Court in its consideration of the questions raised by this litigation.[1]

STATEMENT

1. State Regulation of, and the Dangers Posed by, Tandem Trailers

States of the Union have regulated the use of their highways by trucks for more than six decades. The regulation has been in force since the inception of major truck traffic, and is specifically intended to protect the lives and health of state citizens. In numerous states this safety regulation extends to tandem trailers. Such trucks have been banned in fourteen states, and length restrictions have been imposed in four others. *Kassel v. Consolidated Freightways Corporation*, 450 U.S. 662, 688n.1 (1981) (Justice Rehnquist dissenting).

In Connecticut, the state whose laws are at issue here, the regulation of tandems is a matter of long standing: such trucks have been banned from Connecticut highways for over fifty years.

Connecticut's decision to ban tandems is supported by extensive evidence, much of it adduced in the trial court. A report of the Federal Highway Administration states that tandems are involved in over three times as many accidents as single trailer trucks. Federal Highway Administration, *The Effect of Truck Size and Weight on Accident Experience and Traffic Operations*, at 37-38 (July, 1981). Tandems also cause deaths at over twice the rate of single trailers. In 1981 there were 12.2 deaths per 100 million tandem miles, and 5.6 deaths per 100 million single trailer miles. Insurance Institute for High-

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[1] Pursuant to Rule 36, the parties have consented to the filing of this *amicus* brief. The letters of consent have been lodged with the Clerk of the Court.

way Safety, *Status Report*, at 3 (Mar. 8, 1983) (hereinafter cited as "*Stat. Rept.*").

The deaths caused by tandems occur to passengers in other vehicles. In 1980 an occupant of a car involved in a crash with a tandem was 32.9 times more likely to be killed than an occupant of the tandem. *Stat. Rept.* at 2.

The dangers posed by tandems are exacerbated in Connecticut because of the unique attributes of its roads. Connecticut highways often pass through cities and towns. They are highly congested. Exits occur as often as every 1.4 miles. There are steep grades. (Testimony of R. Gubula, at 95-103.) These road attributes require that vehicles be able to change lanes frequently and smoothly, be able to brake effectively, and be able to climb without slowing.

Tandems, however, are deficient in the necessary handling characteristics. They tend to roll over during lane changes. (Testimony of J. Bernard, at 140-146, 153-155.) They have ineffective braking mechanisms. (Testimony of C. Shapely, at 162-168.) When making a sudden stop, they tend to swing the second trailer into an adjoining lane. (Id.) And they tend to slow to dangerously low speeds when climbing the steep grades of Connecticut roads. (Testimony of F. Hanscom, at 174-181.)

2. The Congressional Act Precluding States From Banning or Limiting the Length of Tandems

In early 1983, Congress enacted the Surface Transportation Assistance Act (STAA). Section 411(c) of the Act precludes Connecticut and all other states from banning tandem trailers from interstate and certain primary system highways. 49 U.S.C. § 2311(c). Section 411(b) of the Act prohibits states from imposing overall length limitations on tandems. 49 U.S.C. § 2911(b). Thus, within the limits of technology, tandems can be as

long as truckers choose, regardless of how long this may be.[2]

Congress offered no evidence or findings on such germane matters as the extent to which these trucks are used, their sizes and configurations, their safety record or characteristics, their adaptability to varying topography, or any need to use them in order to augment interstate commerce. Rather than containing evidence or findings on these matters, the legislative record shows Congress adopted § 411 simply to gain the trucking industry's acquiescence in a five-cents-per-gallon increase in federal gasoline taxes.[3]

3. The Decisions Below

Subsequent to enactment of the STAA, Connecticut enacted Public Act No. 83-21, which reaffirmed the State's long-standing ban on tandems. The United States then filed suit to enjoin the new Connecticut statute. The dis-

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[2] Presently it is technologically feasible for tandems to be eighty-five or even one hundred and five feet in length. In the eighty-five foot configuration, a tractor pulls a forty-five foot trailer plus a twenty-seven foot trailer. In the one hundred and five foot configuration, a tractor pulls two forty-five foot trailers.

Tandems are not the only multiple-trailer trucks in use on highways. Triples, or three trailer trucks, are also in use in some areas. In this configuration a tractor commonly pulls three twenty-seven foot trailers, and the overall length of the truck is ninety-five feet. Also, quadruples are being used in Canada, though not yet in the United States.

[3] As stated by the Secretary of Transportation, the trucking industry is "a very effective lobby". *See* Statement of Hon. Drew Lewis, Committee on Commerce, Science, and Transportation. U.S. Senate, *Hearings on Highway Revenue Act of 1982*, at 24 (Dec. 3, 1982). *See also*, remarks of Senator Packwood, *id.* at 29; remarks of Senator Cannon, *id.* at 2.

Congress' only nod to safety considerations was to direct a study of the subject. The study would occur in the future, whereas the use of tandems where they previously had been banned for reasons of safety would begin immediately.

trict court ruled that the Connecticut law was preempted by the STAA. The court considered it inconsequential that Congress had made no findings and had offered no facts regarding safety or effect on commerce. The court also held the Connecticut law was not saved by the Tenth Amendment. The district court's opinion was affirmed by the Court of Appeals, which adopted the lower court's opinion.

THIS CASE PRESENTS IMPORTANT ISSUES WHICH REQUIRE PLENARY HEARING AND DECISION BY THIS COURT

1. Introduction

This case presents important questions concerning a vital power of state governments—namely, the states' authority to protect their citizens against death and injury on the highways. This authority has been recognized, deferred to, and upheld by the Court in many cases. It is a fundamental aspect of the states' police power, and is a major task of state police forces. As part of the crucial daily police protection offered by states, under decisions of the Court it is protected against federal nullification by the Tenth Amendment.

In the STAA, however, Congress has overridden the states' basic authority to protect citizens on their highways. Congress has nullified the laws of eighteen states which either ban tandem trucks or impose limitations on their length. Congress has done so without taking account of the safety considerations which motivated the states' exercise of their police power. Nor did Congress make any findings or offer any facts to show that nullification of the state laws has now become necessary to promote interstate commerce even though such commerce flourished for many years when tandems were banned or their length was limited. Rather than take account of safety or offer facts regarding commerce, Congress baldly overrode the police powers of eighteen states in order to

gain the support of the trucking industry for a five-cents-per-gallon tax increase.

Amici believe the Congressional nullification of state laws in this case is unconstitutional. Such illegality stems from the degree of federal intrusion upon vital state authority to protect citizens, plus the absence of any demonstrated necessity for such intrusion. At the very least, the question of *whether* the federal government can preclude numerous states from protecting the life and limb of their citizens, and can do so without consideration of safety or demonstration of necessity, is an important issue of federalism which deserves plenary hearing and decision by the Court.

2. Section 411 of the STAA is Unconstitutional Because it Nullifies an Important State Power Without Any Demonstration of Justification or Necessity

Regulation of highway safety, including the use of roads by trucks, is a longstanding function of state governments. Such regulation has been carried out to protect the lives and health of state citizens. It has been a basic feature of our federal system, under which certain functions are performed by the national government and others by the state governments. The structure and proper functioning of the federal system is, of course, a primary concern of the Tenth Amendment. *See National League of Cities v. Usery*, 426 U.S. 833 (1976).

The Court has long recognized the high importance of the states' power to regulate their highways in the interests of safety. Thus the Court and individual Justices have time and again agreed on numerous propositions. It has been agreed that highway safety is peculiarly a matter of local concern. *South Carolina State Highway Department v. Barnwell Brothers, Inc.*, 303 U.S. 177, 187 (1938). It has been agreed that state regulations regarding highway safety carry a strong presumption of validity, that the views of local lawmakers on the subject

receive extensive deference, and that the Court is exceptionally reluctant to strike down state safety rules. *Kassel v. Consolidated Freightways Corp.*, 450 U.S. 662, 670 (1981) (opinion of Justice Powell, joined by Justices White, Blackmun and Stevens), 686 (opinion of Justice Brennan, joined by Justice Marshall), 690, 692n.4 (dissenting opinion of Justice Rehnquist, joined by Justices Burger and Stewart); *Raymond Motor Transportation, Inc. v. Rice*, 434 U.S. 429, at 443, 444 (1978); *Bibb v. Navajo Freightlines, Inc.*, 359 U.S. 520, at 524 (1959). And it has been further agreed that, because of the critical nature of safety regulations, courts will not measure them against asserted burdens on interstate commerce in determining their validity. *Kassel v. Consolidated Freightways, supra*, at 670, 686-687, 691.

Despite the importance of state safety laws, in this case Congress has blotted out the safety regulations of eighteen states. And unlike other cases in which it has enacted sweeping or profound measures,[4] Congress has offered no findings or evidence to support its action. Thus, the federal statute cannot be supported on the ground that Congress believed the state laws regulating tandems were archaic or unnecessary from the safety standpoint. For Congress made no findings and offered no evidence to such effect, and studies and evidence adduced in this case show that state laws regulating tandems *are* necessary to protect citizens. Nor can the federal statute be justified on the ground that, regardless of safety, it is necessary to override state laws in order to promote interstate commerce. Here again Congress made no findings and offered no evidence, and the fact is that extensive

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[4] *See FERC v. Mississippi*, 456 U.S. 742 (1982); *Hodel v. Virginia Surface Mining and Reclamation Association, Inc.*, 452 U.S. 264 (1981); *Fullilove v. Klutznick*, 448 U.S. 448 (1980); *Katzenbach v. McClung*, 379 U.S. 294 (1964); and *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964); which are discussed below.

interstate commerce has existed for many years during which states banned tandems or limited their length.

The absence of supporting findings or evidence shows that Congress was without legitimate justification for enacting a statute which nullifies vital state interests. The presence or absence of demonstrated justification is a matter this Court often has taken into account when assessing the validity of legislation, be it federal or state.[5] Thus, in upholding federal measures in such cases as *FERC v. Mississippi*, *supra*, *Hodel v. Virginia Surface Mining* and *Reclamation Association*, *supra*, *Fullilove v. Klutznick*, *supra*, *Katzenbach v. McClung*, *supra*, and *Heart of Atlanta Motel, Inc. v. United States*, *supra*, Justices specifically recognized that the legislative history contained extensive information showing that the laws at issue were necessary to achieve valid governmental purposes. Conversely, when striking down state enactments in the *Kassel* and *Raymond* cases, *supra*, Justices specifically recognized that the legislative background showed that the laws were enacted for invalid purposes.

Because Congress has wiped out state laws furthering an important state interest, and has done so with no demonstrated justification, *amici* believe the STAA violates the Constitution. The Constitution establishes, and the Tenth Amendment protects, a federal structure under which certain governing powers are for the states and others are for the national government. A basic power of the states in our federal system is "the fundamental

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[5] In addition, Justice Stevens has made clear his view that, when Congress is dealing with legislation of great constitutional importance, the spareness or thoroughness of the procedures employed by Congress, and a statement of Congressional purpose, are relevant to a determination of the legality of the Congressional enactment. *Fullilove v. Klutznick*, *supra*, at 550-551 (Justice Stevens dissenting). Justice Stevens' position was supported by references to the views of such leading constitutional scholars as Professor (now Justice) Linde, Dean Rostow, Dean Sandalow and Professor Strong. *Ibid.* at ns. 26 and 27.

right to pass laws to secure the safety of their citizens." *Kassel v. Consolidated Freightways Corp.*, *supra*, at 687 (dissenting opinion of Justice Rehnquist, joined by Justices Burger and Stewart). Here that "fundamental right" is infringed without warrant or necessity. Such infringement is contrary to the basic plan of our government. At the very least it raises important questions which should be addressed by the Court.

3. Points Raised In Defense of § 411 Demonstrate the Need for Plenary Hearing

The need for plenary decision is further shown by points raised in defense of § 411. Such points illustrate that serious and impermissible inroads are being made upon state power.

First, the federal government has said it has provided a major share of the funds used to build interstate and primary highways. *Brief For Appellees, State of Connecticut, et al. v. United States et al.*, No. 83-6159 (2d Cir.) p. 3; *Memorandum of Points and Authorities In Support of Motion for Preliminary Injunction, United States of America, et al. v. State of Connecticut, et al.*, No. H83-445 (D.C. Conn.), p. 3. But the vast preponderance of these funds were granted long before Congress sought to overrule the states' power to protect their citizens, and long before the states could have knowledge of the Congressional attempt. Because they were provided before the possibility of such knowledge, under *Pennhurst School and Hospital v. Halderman*, 451 U.S. 1 (1981), the prior funds cannot justify the later effort to displace state authority.

There is also an additional and deeply fundamental flaw in the federal government's position. Reliance on federal funding to justify displacement of state authority is a common argument.[6] But it is an argument which will

[6] Just such an argument is being made in *Donovan* v. *Metropolitan Transit Authority*, No. 82-1951, probable jurisdiction noted, October 3, 1983.

vitiate the federal nature of our system. For the national government has a financial power vastly superior to that of the states: it has an infinitely greater ability to raise money through taxation and borrowing. Because of its superior financial power, the national government grants scores of billions of dollars annually to state and local governments to enable them to carry out their essential sovereign functions.[7] The granted funds are used in such crucial state fields as health, education, safety, police protection and roads. Without the funds the state and local governments could not perform their sovereign duties effectively.

Thus, if the grant of federal funds enables the national government to establish governing rules in areas the Constitution otherwise commits to the states, then national power will be aggrandized and state authority will be diminished across a broad range of critical state activities. Instead of power being divided between the national and state governments, as the Constitution contemplates, it will be centralized in the national government, as the Constitution eschews. This Court sits to prevent such warping of our basic plan of government, and it should address the vital question of whether federal power follows in the train of federal money.

Second, claiming reliance on prior decisions of this Court, the federal government has said that Connecticut's fundamental power to protect its citizens does not receive constitutional protection under the Tenth Amendment because § 411 regulates not the states but private parties. Brief for Appellees, *State of Connecticut, et al. v. United States, et al.*, No. 83-6159 (2d Cir.), pp. 28-33.

The federal government's position is incorrect. Section 411 specifically says "No state shall prohibit" tandems,

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[7] It has been estimated that the federal government granted $82.9 billion to state and local governments in 1980. Madden, *The Constitutional and Legal Foundations of Federal Grants*, in *Federal Grant Law* (American Bar Association, 1982), at p. 6, n. 3.

49 U.S.C. § 2311(c), and "No state shall establish" overall limitations on the length of tandems, 49 U.S.C. § 2311 (b). The statute thus directly interdicts the "ability of a state legislative . . . body . . . to consider and promulgate regulations of its own choosing", an ability "central to a State's role in the federal system". *FERC v. Mississippi, supra*, at 761.

But though § 411 expressly interdicts state decisionmaking, the federal government says the statute merely preempts state laws, and that "The effect of *every* federal preemption statute is to prohibit states from enacting or enforcing inconsistent state laws." *Brief for Appellees, State of Connecticut v. United States, supra*, at 33. (Emphasis in original.) According to the federal government, the situation is as if the statute did not say "No state shall" prohibit tandems or establish limits on their length, but said instead that "Private parties shall be allowed" to use tandems and to do so regardless of length.

The argument of the federal government transmutes the explicit language of the statute, as just shown. The propriety of transmuting explicit language which Congress could have written differently had it so desired is subject to question.

Beyond this the federal government's position shows that the constitutional plan can readily be subverted if Tenth Amendment protection depends on whether a federal law regulates states *qua* states. The Constitution divides governing power between federal and state governments. But if Congress wishes to intrude upon the states' sphere of governance, and if state power receives no protection unless Congress regulates the states *qua* states, then Congress can simply phrase its law in terms of what private parties can or cannot do instead of phrasing it in terms of what states can prohibit or allow. Indeed, under the federal government's position, the Con-

gressional phraseology is irrelevant because language can be transmuted.

Thus, a requirement that states be regulated *qua* states before Tenth Amendment protection applies gives the federal government a ready escape from otherwise applicable constitutional limitations on its power; such requirement readily enables the federal government to invade the province of the states. If the Constitutional plan is to be preserved, the question which should be asked and answered is not whether the federal government is regulating the states *qua* states, but whether the states' sphere of governance is being infringed.

CONCLUSION

For the foregoing reasons this Court should grant a plenary hearing in this case and, upon such hearing, should reverse the decision below.

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